

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

SIMPLEAIR, INC. \* Civil Docket No.  
\* 2:11-CV-416  
VS. \* Marshall, Texas  
\*  
\* January 13, 2014  
\*  
MICROSOFT CORPROATION, ET AL \* 9:25 A.M.

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(Proceedings recorded by mechanical stenography,  
transcript produced on CAT system.)

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11 \*\*\*\*\*

12 P R O C E E D I N G S

13 COURT SECURITY OFFICER: All rise.

14 THE COURT: Good morning. Be seated,  
15 please.

16 I want to thank you, ladies and  
17 gentlemen, for being here on time and ready to go this  
18 morning. My name is Rodney Gilstrap. I'm the resident  
19 United States District Judge here in the Marshall  
20 Division of the Eastern District of Texas. I've lived  
21 in Marshall since 1981, practiced law here until I went  
22 on the bench in 2007. Grew up in Florida, but I got to  
23 Texas as quick as I could to attend Baylor University  
24 and Baylor Law School.

25 I'm married. I have two grown children  
and my wife owns and operates a retail floral business

1 here in Marshall. Now, I tell you all those things  
2 because in a few minutes, we're going to ask each of you  
3 to tell us basically the same information about each of  
4 you. And I think it's only appropriate that you know as  
5 much about me as I'm about to find out about each of  
6 you-all.

7                   We're about to engage in the selection of  
8 a jury in a civil case involving allegations of patent  
9 infringement. I know that you've seen the patent film  
10 this morning, since patent cases involve certain things  
11 that ordinary civil cases do not. In a civil case such  
12 as this one, the United States is the only country in  
13 the world -- say that again -- the United States is the  
14 only country in the world that guarantees a right to a  
15 trial by jury in a civil case.

16                   Your being here this morning and  
17 participating, you are in a very real way doing your  
18 duty as ordinary citizens to preserve, protect, and  
19 defend our United States Constitution and particularly  
20 the 7th Amendment, which is a part of our Bill of Rights  
21 which guarantees that right to a jury trial in a civil  
22 case.

23                   I always tell jury panel members, and I  
24 believe it more each time I select a jury, that jury  
25 service in my view is the second highest form of public

1 service that any American citizen can perform. Of  
2 course, the highest form of public service are those  
3 young men and women that serve in our armed forces and  
4 put their lives on the line. But you are -- you are  
5 rendering a very real and significant public service by  
6 being here this morning. And I commend each one of you  
7 for being here.

8                   Now, when the lawyers address you this  
9 morning, which will happen shortly, they're going to ask  
10 you questions. And I want you to understand that  
11 they're not seeking to pry into your personal affairs or  
12 to inquire unduly into your personal circumstances.

13                   They're entitled to ask questions, and  
14 that's for the sole purpose of securing a fair and  
15 impartial jury to hear the evidence in this case.

16                   I don't know if it will happen today. It  
17 usually doesn't, but it is possible that you could be  
18 asked a question that you believe is so personal and so  
19 private that you are uncomfortable answering it in front  
20 of the entire jury panel. If that happens, you just  
21 simply need to say you'd like to discuss that with Judge  
22 Gilstrap, and I'll make arrangements for you to discuss  
23 that outside of the presence of everybody else on the  
24 jury panel.

25                   Again, you have that option. It rarely

1 comes up. I don't suspect it will this morning, but in  
2 case it does, you do have that option.

3           It's critically important that when  
4 you're asked questions this morning as a part of this  
5 jury selection process that you give full, complete, and  
6 truthful answers. Please be assured, ladies and  
7 gentlemen, there are no wrong answers as long as your  
8 responses are full, complete, and truthful.

9           The trial in this case is going to begin  
10 today, after we select the jury. And I expect the  
11 evidence in this case will go through the end of this  
12 week. So we're looking at selecting a jury that can be  
13 available to serve from today through the end of this  
14 week, which, as I calculate it, is the 17th of January.

15           If there are any of you on the jury panel  
16 that have scheduled surgery for yourself; you have a  
17 prepaid vacation with non-refundable airline tickets; if  
18 you have something that would prevent you from serving  
19 on this jury over that period of time, I need you to  
20 raise your hand and let me make a note of it right now.

21           Anybody have a problem like that? And  
22 you'll keep them up until I get everybody down.

23           Okay. No. 10, Ms. Cox; No. 14,  
24 Mr. Powell.

25           And I saw a lady back there. What is

1 your number, ma'am?

2 JUROR CROW: 20.

3 THE COURT: 20? Thank you. I couldn't  
4 see you for the gentleman in front of you. That's  
5 Ms. Crow.

6 Is there anybody else that raised their  
7 hand? Those three, okay.

8 At this time, I'm going to call for  
9 announcements in the case of SimpleAir, Inc., versus  
10 Google, Inc. This is Case No. -- Civil Case  
11 No. 2:13-CV-587.

12 And, Counsel, when you give your  
13 announcements, if you would, please introduce everybody  
14 on your trial team. And if you have a corporate  
15 representative with you who will be here through the  
16 trial, please introduce your corporate representative.  
17 So with that, what says the Plaintiff?

18 MR. CAPSHAW: Your Honor, Calvin Capshaw  
19 for SimpleAir, and we're ready to proceed.

20 With me at counsel table is Mr. John  
21 Payne, one of the inventors of the '914 patent. And  
22 Mr. Tim von Kaenel; he's another inventor on the patent.  
23 They'll be with us as representatives for SimpleAir  
24 throughout the trial.

25 Mr. Greg Dovel of Dovel Luner will be

1 counsel. Mr. Jeff Eichmann of Dovel Luner will be  
2 assisting us. And my partner, Elizabeth DeRieux, will  
3 be helping us as well. We'll also have Caitlin Walker  
4 and Diane Kim. They're in the audience. There they  
5 are. And they'll be keeping us straight in our case  
6 today.

7 THE COURT: Good.

8 MR. CAPSHAW: Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Capshaw.  
10 What says the Defendant?

11 MS. AINSWORTH: Good morning, Your Honor.  
12 Jennifer Ainsworth on behalf of Google.

13 And with me today as co-counsel are  
14 Mitchell Stockwell, Ms. Danielle Williams, and  
15 Mr. Russell Korn. And we'll be putting on the -- the  
16 case together. And also from Google is Mrs. Angana  
17 Ghosh who's a product manager in Android, and she will  
18 be a witness in the case and will be sitting with us  
19 representing Google.

20 And we're ready to proceed.

21 THE COURT: Thank you, Ms. Ainsworth.

22 Ladies and gentlemen, as I've told you,  
23 this is a patent case arising under the patent laws of  
24 the United States. What the Plaintiff is claiming in  
25 this case as -- is that its patent was infringed by the

1 Defendant, and they're seeking money damages because of  
2 that infringement.

3           The Defendant denies that they've  
4 infringed the Plaintiff's patent and contend that the  
5 patent is invalid. Now, what I've just told you is a  
6 very brief and very informal way of describing the case  
7 in layman's terms. Having seen the patent film, you  
8 know more about patent cases than most people in East  
9 Texas do already.

10           Again, just a couple reminders. During  
11 the questioning in this selection process, there are no  
12 wrong answers as long as your responses are full,  
13 complete, and truthful.

14           And, again, as I mentioned, the lawyers  
15 are not trying to pry unduly. They're simply seeking to  
16 secure a jury that can serve in this case that is fair  
17 and impartial. If any of the lawyers should ask a  
18 question that I don't think is proper, I'll certainly  
19 let them know that.

20           But you should understand, ladies and  
21 gentlemen, these are experienced lawyers, and I don't  
22 expect that to be a problem. I'm confident that they  
23 understand and will stay within the rules of this Court.

24           One thing I want to call to your  
25 attention, because it's quite possible that some of the

1 lawyers might ask you about it during the questioning of  
2 the jury panel, is the burden of proof. In a patent  
3 case, the members of the panel that are selected to  
4 comprise our jury will be called upon to apply two  
5 different burdens of proof to the evidence in this case.

6               The jury will apply a burden of proof  
7 known as a preponderance of the evidence as well as a  
8 second burden of proof known as clear and convincing  
9 evidence.

10              When responding to lawyer's questions  
11 about the burden of proof, I need to instruct you that  
12 when a party has the burden of proof on any claim or  
13 defense by a preponderance of the evidence of the  
14 evidence, it means that you, the jury, must be persuaded  
15 by the credible or believable evidence that the claim or  
16 defense is more probable true than not true. I'll say  
17 that again. More probably true than not true.

18              Sometimes this is talked about as being  
19 the greater weight and degree of credible testimony.

20              Let me give each of you an illustration  
21 in this regard, and I think all of you can see in front  
22 of our court reporter, Ms. Holmes, a statue, the Goddess  
23 of Justice or Lady Justitia as she's sometimes called.  
24 You notice she has three distinct features. In her  
25 right hand, she holds a sword of justice. You notice

1 that she's blindfolded, so she is supposed to be  
2 impartial. And in her left hand, she has raised the  
3 Scales of Justice. And it's the Scales of Justice I  
4 want you to focus on as a part of this illustration.

5           At the close of evidence in this case the  
6 Court's going to submit questions to the jury, and the  
7 party that has the burden of proof as to those questions  
8 by a preponderance of the evidence, if you'll consider  
9 that all the evidence during the trial is placed on  
10 those two perfectly balanced scales that she's holding,  
11 when all the evidence is in and the trial is over, if  
12 the party who has the burden of proof by a preponderance  
13 of the evidence has those scales tip in their favor,  
14 even if it's ever so slightly, then they have met their  
15 burden of proving that by a preponderance of the  
16 evidence.

17           On the other hand, when a party has the  
18 burden of proving any defense by clear and convincing  
19 evidence, it means that you, the jury, must have an  
20 abiding conviction that the truth of the parties'  
21 factual contentions are highly probable. Clearly that's  
22 a higher standard of proof than the preponderance of the  
23 evidence.

24           So turning back to the same illustration,  
25 if you imagine the Scales of Justice perfectly balanced

1 and during the trial all of the evidence is placed on  
2 those scales, then when the trial is over and the  
3 evidence has all come in, the party that has the burden  
4 of proof by clear and convincing evidence must have  
5 those scales tip in their favor more than ever so  
6 slightly. They must tip substantially in their favor to  
7 meet the burden of proof of clear and convincing  
8 evidence.

9                   Now, none of this is to be confused with  
10 the third burden of proof called beyond a reasonable  
11 doubt. That's the burden of proof used in a criminal  
12 case, and it has no application in a civil case such as  
13 this whatsoever. So you should not confuse clear and  
14 convincing evidence with evidence beyond a reasonable  
15 doubt. It's -- it is not as high as beyond a reasonable  
16 doubt. But it is a higher burden of proof than by a  
17 preponderance of the evidence.

18 I give you these instructions in case  
19 some of the lawyers during their questioning ask you  
20 about your ability to understand and apply those two  
21 burdens of proof to the evidence that will come in  
22 during the trial of this case.

23 Now, as I said when I came in, I'm about  
24 to learn as much about you as I told you about myself.

25 You'll see on the screen across from the

1 jury box a list of nine questions. We're going to start  
2 with Panel Member No. 1, Ms. Foster, and the Court  
3 Security Officer, Mr. Floyd, is going to bring you a  
4 handheld microphone and I'm going to ask each person one  
5 at a time to stand, use that microphone, and answer  
6 those nine questions. Then we'll go to the next person  
7 until we've been through the whole panel.

8 I want -- it's very important in a room  
9 this large with as many people as we have, that you do  
10 two things, and this applies not only to giving me the  
11 answers to these nine questions, but it applies in your  
12 responses to any questions that the lawyers may ask you  
13 in a little bit. Please stand and please use that  
14 handheld microphone. Without -- if you begin to give an  
15 answer or you start an answer without that, I guarantee  
16 you everybody that needs to hear your response won't  
17 hear your response. So please use the handheld mic and  
18 please stand whenever you're giving a response.

19 Okay. Mr. Floyd, if you'll take the  
20 microphone to Ms. Foster.

21 Ms. Foster, if you'll answer those nine  
22 questions for us, please.

23 JUROR FOSTER: My name is Joyce Hill  
24 Foster. I live in Bivins, Texas. I have five grown  
25 children, six grands. I'm currently retired, and I

1 retired from Northeast Texas Mental Health Mental  
2 Retardation Center where I was an HR director. I am  
3 single, so No. 7 does doesn't apply. And No. 8 -- and I  
4 have never served on a jury.

5 THE COURT: Thank you. And if you'll  
6 pass that down to Mr. Prestidge. If you'd give us your  
7 answers, please, sir.

8 JUROR PRESTIDGE: Good morning. I'm  
9 Rickey Prestidge. I live in Marshall, Texas, one mile  
10 outside the city limits. I'm currently unemployed,  
11 waiting to kick a job off in Houston down at Port  
12 Arthur. I work pipeline construction, work out of Local  
13 Union 798 out of Tulsa. Been in the union 10 years.  
14 Just got back from New York on a job up there. Been off  
15 a couple months. Quit high school in the 10th grade.  
16 Got tired of being poor. My wife -- been married for 41  
17 years. Her name is Rita Daucet Prestidge. Housewife,  
18 mother, grandmother. She hasn't worked anywhere in a  
19 long, long time. And I've served on a civil jury in  
20 this courthouse and a criminal case in this courthouse.

21 THE COURT: Thank you, sir.  
22 Next, Mr. Dilday.

23 JUROR DILDAY: My name is Randy Dilday,  
24 and I live in Hallsville, Texas. I have two children,  
25 both boys, 7 and 13. I work at ICS/NCIC. It's a

1 telecommunication company in Longview, Texas. Our base  
2 is inmate telecom. I run the call center there as  
3 customer service manager, as well. Lived currently in  
4 my home 14 years in Hallsville. Graduated high school  
5 in New Diana, Texas. Went to ETBU and Kilgore College.  
6 My spouse's name is Karen. She currently works at  
7 Kilgore College. She's been in her new position the  
8 past year and a half. And I've never been selected on a  
9 jury as of yet.

10 THE COURT: All right. Mr. Brooks.

11 JUROR BROOKS: My name is Dale Brooks. I  
12 have two grown children. I work for Crosby Lebus in  
13 Longview, Texas, and I'm the electric shop supervisor  
14 there. I've been there 41 years. I graduated high  
15 school, went to Vietnam. My wife's name is Betty.  
16 She's the team leader at Sam's in Longview in the  
17 Jewelry Department. She's been there about 15 years.  
18 I've never been chosen in court for jury duty.

19 JUROR NORRIS: My name is Philip Norris.  
20 I live in Jefferson, Texas. I have three children, 12  
21 grandchildren that do not live with me. And I have -- I  
22 worked for the Made-Rite Company. I retired after 35  
23 years. And my educational background is Central High  
24 School of Jefferson, Texas. My spouse's name is Marver.  
25 And she worked for Old Navy for the last 20 years. And

1 I've served on a civil and a criminal -- criminal court.

2 THE COURT: Thank you, Mr. Norris.

3 Mr. Davis.

4 JUROR DAVIS: Hi, my name is Richard

5 Davis. I was -- I live in Waskom, Texas. I'm single.

6 I have no children. I work for Legal Services of North

7 Louisiana in Shreveport. I've been there 15 years.

8 I've got -- I graduated high school in Marshall. Went

9 to some college at BPC in Bossier. I'm not married.

10 And I've served on one criminal case before.

11 THE COURT: Thank you.

12 Ms. Love.

13 JUROR LOVE: I'm Mary Love. I have two

14 grown children, ten grandchildren. At present, I work

15 for Jackson Hewitt Tax Services there in Atlanta, Texas.

16 I've been with that company for nine years. Before

17 then, with H & R Block. I'm -- graduated from Fairview

18 High School in Linden, Texas. My spouse is Calvin Love,

19 which is deceased for two years. I have never served on

20 either criminal or civil.

21 THE COURT: Thank you, ma'am.

22 And if you'll take that around to Mr.

23 Bryant, we'll start with him next, please.

24 JUROR BRYANT: My name is Myles Bryant.

25 I live in Elysian Fields, Texas. I have four grown

1 children, all away from home. I'm a retired postal  
2 worker. I'm a DAV, Vietnam. Two years of college, no  
3 degree. My wife's name is Laura, also medically retired  
4 from U.S. Post Office. Both of those been away from  
5 over there since '95 and '97, and I have never served on  
6 a jury.

7 THE COURT: Thank you, sir.  
8 Mr. Howell.

9 JUROR HOWELL: My name is Lonnie Howell.  
10 I live in Hallsville, Texas. I have two children, an  
11 18-year-old and a 16-year-old. I work at Peters  
12 Chevrolet Chrysler Dodge. I've been there about a year  
13 and a half. My educational background is high school,  
14 some college. My wife's name is Rebecca Howell. She  
15 works at Good Shepherd, has been there for -- right at  
16 eight years. She's in the IT Department there. And I  
17 have never served on a jury.

18 THE COURT: All right, sir.

19 JUROR COX: My name is Susan Cox. I live  
20 in Gilmer, Texas. I have one grown daughter. I am a  
21 retired school counselor, but I never quit. I'm working  
22 at Region 7 Educational Service Center as a behavior  
23 specialist, finishing my fourth year there. I went to  
24 Baylor University and Master's degree from Texas A&M  
25 commerce. My spouse is Doug Cox. He's a semiretired

1 jeweler. He was working at McCarley's Jewelry for 22  
2 years and then retired. I have served on two civil  
3 cases before.

4 JUROR ALLEN: My name is Conrett Allen.  
5 I live in Marshall, Texas. I have three grown kids. I  
6 currently work for Jordan Health Services. I've worked  
7 there four years. Before then, I worked in the oilfield  
8 for 10. My educational background is high school. I  
9 graduated from South Garland High and Garland High. And  
10 I don't have a spouse. And I've never served on a civil  
11 or a criminal jury.

12 THE COURT: All right, sir. Thank you,  
13 Mr. Allen.

14 Mr. Bright.

15 JUROR BRIGHT: My name is Kevin Bright.  
16 I live in Longview. I have two daughters, 27 and 16.  
17 I'm a pastor of First Baptist Church, Greggton First  
18 Baptist Church in Longview. I've been there a year.

19 Before that, I was about 12 years at  
20 Oakland Heights Baptist Church as an associate pastor.  
21 I have a bachelor and master's degree in business from  
22 Baylor University and a master's degree in divinity from  
23 New Orleans Baptist Theological Seminary.

24 My wife's name is Yolanda. She's a  
25 sixth-grade bilingual teacher at Pine Tree School

1 District. She's worked there about seven years. I've  
2 never been selected to be on a jury before.

3 THE COURT: Thank you, sir.

4 Ms. Palmer.

5 JUROR PALMER: Good morning. My name is  
6 Amanda French Palmer. I live in Marshall. I have a  
7 stepson 40 -- 40, maybe a little older. I am a  
8 self-employed writer and Christian speaker. And I've  
9 been doing that for about 25 years. Prior to that, I  
10 practiced law for five years.

11 My educational background, of course, is  
12 I have a BA in English Lit and a JD from LSU Law Center.  
13 I'm married to Paul. He is an investor. He's been  
14 doing that about 35 years. Prior to that, he was a  
15 forester for Georgia-Pacific. I have never served on a  
16 jury.

17 THE COURT: Thank you.

18 Mr. Powell.

19 JUROR POWELL: My name is Adam Powell. I  
20 live in Hallsville, Texas. I do not have any children.  
21 I currently work at Energy Well Fab in White Oak, Texas,  
22 as a welder. I've worked there, be a year in March. I  
23 graduated high school from Hallsville High School and  
24 went to Tulsa Welding School and have a certificate from  
25 there. I do not have a spouse, and I have never served

1 on a jury.

2 THE COURT: All right, sir.

3 If you'll carry that microphone,  
4 Mr. Floyd, over to No. 15, Mr. Williams.

5 JUROR WILLIAMS: My name is Jonathan  
6 Williams. I live in Longview, Texas. I have one  
7 daughter. She's 19 years old. She's currently about to  
8 complete basic training for the United States National  
9 Guard. I'm a store manager for Top Notch Supply in  
10 White Oak, Texas. Been there about six months. It's a  
11 brand new company. Was hired on on the ground floor.  
12 Went to school at Hallsville. Left about one credit  
13 shy. Been on my own since I was 16 and was working  
14 60-70 hours a week. Had to eat, and so no diploma from  
15 there. Been married about a year. Julie Lightfoot  
16 Williams is her name. She is an independent inventory  
17 auditor for Riggins Inventory Services.

18 I have served on juries before. One was  
19 a civil (sic) case in which the Defendant pled, and so  
20 we never continued that case. And I served on a grand  
21 jury in the 188th District Court for Gregg County for  
22 about two months about two years ago.

23 THE COURT: Thank you, sir.  
24 Mr. Pawlak.

25 JUROR PAWLAK: Good morning. My name is

1 Steven Pawlak. I'm from Longview, Texas. I have four  
2 children. I currently work as a manager for United  
3 States Steel and Pipe Manufacturing and Processing.  
4 It's located in Lone Star, Texas. I've been with United  
5 States Steel for about 15 and a half years.

6                   Graduated high school, some college.  
7 Spouse's name is Bridgette May Pawlak. Doesn't work;  
8 homemaker. She's the CEO at my address. No prior jury  
9 service.

10                   JUROR PEMBERTON: Sam Pemberton. I have  
11 two kids; one 10, one 5. I work for US Steel as a  
12 machinist in central maintenance. And I've been there  
13 about 13 years. I have a certificate of completion of  
14 computer-integrated manufacturing through a trade school  
15 here in Marshall.

16                   And my wife is Kelly Pemberton, and she  
17 works for Hughes Springs ISD School District where she  
18 teaches high school math. And I have never served on a  
19 jury.

20                   JUROR BROWN: I'm Kay Brown. I live in  
21 Atlanta. I have no children. I work at Christus  
22 St. Michaels as a RN. Been there for a year and a half.  
23 I graduated from Atlanta High School and Texarkana  
24 College. I'm not married and never been on a jury.

25                   THE COURT: All right. Next is No. 19,

1 Mr. Burnam.

2 JUROR BURNAM: My name is Marty Burnam.  
3 I live in Gladewater, Texas. I have two children. I  
4 work at Pegues Hurst. Been a couple years, in Longview,  
5 Texas. I graduated from Hereford High School in  
6 Hereford, Texas.

7 My wife's name is Beatrice. She works  
8 for Texas Bank and Trust. She's been there eight, nine  
9 years. And I've been on a civil case before.

10 THE COURT: Thank you, sir.  
11 Ms. Crow.

12 JUROR CROW: Hi. I'm Katherine Crow from  
13 Atlanta, Texas. I have two sons, 18 and 20. I am  
14 currently a nursery worker at First United Methodist  
15 Church in Atlanta. And I also baby-sit for my sister  
16 and brother-in-law for an 18-month-old.

17 Let's see. I graduated from high school.  
18 I'm divorced. I don't have a husband. I've been on one  
19 jury once, and that was civil.

20 THE COURT: Thank you, ma'am.

21 JUROR BAKER: My name is Todd Baker. I  
22 live in Queen City, Texas. I have two children. I've  
23 worked at Cooper Tire and Rubber for a little over 15  
24 years as production supervisor. Previous to that, I  
25 worked for the Atlanta Fire Department as a

1 firefighter/medic. A lot of my educational background  
2 was in units for medical and fire stuff.

3 My wife, Michelle, works at Queen City  
4 Independent School District as a teacher's aide. She's  
5 been there about 10 years. And I've never served on any  
6 civil or criminal case.

7 THE COURT: Thank you, sir.

8 Ms. Cerliano.

9 JUROR CERLIANO: My name is Becky  
10 Cerliano; technically, Rebecca. I currently live in  
11 Linden, Texas. I have no children. I work for the  
12 Linden-Kildare Consolidated Independent School District.  
13 I'm a classroom teacher at the high school. I've been  
14 in Linden -- this is -- I'm a 39-year educator. This is  
15 14 years in Linden, after 25 in Jefferson.

16 I graduated Longview High School, Stephen  
17 F. Austin State University with a bachelor's; Stephen F.  
18 Austin University with a master's and numerous hours  
19 after that. I have no spouse, and I previously served  
20 on a civil jury in this district that never went to  
21 deliberation. They settled at lunch on the fourth day.

22 THE COURT: All right.

23 Mr. Murray.

24 JUROR MURRAY: My name is Yancy Murray.  
25 I'm from Harleton, Texas. I've got two kids. I work

1 for Legacy Ag Credit. I'm a loan officer. I've been  
2 there about six years.

3           Graduated from Harleton High School.  
4 Also have a bachelor's degree from East Texas Baptist  
5 University here in Marshall. My wife's name is Jamie.  
6 She is a homemaker. She also works some at the Harleton  
7 High School as a sub, and she's been doing that for  
8 about three years. And I have been on one criminal  
9 case.

10           THE COURT: Thank you, sir.

11           Next is No. 24, Mr. Hale.

12           JUROR HALE: I am Robert Hale. I have  
13 one son. I've worked for East Texas Fuels for about  
14 five months. I'm a high school grad, some college, not  
15 married. And I've never served on a jury.

16           JUROR DARDEN: I'm Steve Darden. I've  
17 got two sons, 27 and 23. I'm a financial advisor with  
18 Williams Financial Advisors in Shreveport, Louisiana.  
19 Been there for eight years. I've got a business degree  
20 from Stephen F. Austin State University.

21           My wife's name is Sandy, and she is an  
22 administrator with Cumberland Presbyterian Church here  
23 in Marshall. She's been there for 12 years. And I've  
24 served in two criminal cases.

25           THE COURT: Thank you.

1 Ms. Martin.

2 JUROR MARTIN: My name is Mary Martin.

3 I -- I don't have my glasses; I forgot them. I have two  
4 daughters, grown daughters and four grandsons. I worked  
5 for Walmart for 20 years, retired. I was a supervisor  
6 all over the country as a remodel crew. I was an  
7 assistant manager for four years. And now I'm retired.

8 And --

9 THE COURT: Educational background?

10 JUROR MARTIN: High school graduate.

11 THE COURT: Spouse's name?

12 JUROR MARTIN: James Gossett. He works  
13 at Turner Industries at the Eastman facility in  
14 Longview.

15 THE COURT: And how long has he worked  
16 there?

17 JUROR MARTIN: Five years. He worked at  
18 Lone Star and retired from there 30 years as a  
19 maintenance supervisor.

20 THE COURT: And what about prior jury  
21 service?

22 JUROR MARTIN: I was on a criminal case,  
23 and that's all.

24 THE COURT: And tell us where you live,  
25 please, Ms. Martin.

1 JUROR MARTIN: Avinger, Texas.

2 THE COURT: Thank you.

3 JUROR SAMFORD: My name is George  
4 Samford, and I'm like her, I didn't bring my glasses and  
5 it's hard to read.

6 THE COURT: Where do you live, Mr.  
7 Samford?

8 JUROR SAMFORD: I live in northwest  
9 Upshur County.

10 THE COURT: And how many children do you  
11 have?

12 JUROR SAMFORD: I have one son, who is 41  
13 years old, and I'm currently retired from US Steel.

14 THE COURT: What did you do --

15 JUROR SAMFORD: And General Motors, and  
16 my wife, she's retired. She used -- she worked at SFG.

17 THE COURT: What did you do for US Steel  
18 and General Motors?

19 JUROR SAMFORD: I worked in the chemical  
20 and destructive lab at US Steel, and I drove a forklift  
21 at General Motors.

22 THE COURT: And what about your  
23 educational background?

24 JUROR SAMFORD: I have a high school  
25 education, and I have -- my wife and I both have our

1 real estate license.

2 THE COURT: And tell me about your wife's  
3 employment, what does she do?

4 JUROR SAMFORD: She worked on a receiving  
5 dock.

6 THE COURT: Okay. And how long did she  
7 work there?

8 JUROR SAMFORD: Seven years.

9 THE COURT: What about prior jury service  
10 for you?

11 JUROR SAMFORD: I was on two criminal  
12 cases.

13 THE COURT: All right, sir.

14 JUROR SAMFORD: In Upshur County.

15 THE COURT: Thank you.

16 And No. 28 is our last panel members, and  
17 that's Ms. Nolen.

18 JUROR NOLEN: My name is Shannon Nolen.  
19 I'm from Queen City, Texas. I have two children. I  
20 currently work at the Fix Your Well Company there in  
21 Queen City, along with my husband. It is a family  
22 business. We joke, I run the inside, he runs the  
23 outside. So he has been there for 20 years. I have  
24 been there for 15 years. And I have no prior jury  
25 service.

1                   THE COURT: Thank you, ma'am. If you'll  
2 pass that microphone back to Mr. Floyd.

3                   Thank you very much, ladies and  
4 gentlemen. I need to tell you just a couple more things  
5 before I turn the questioning over to the lawyers.

6                   The jurors that are actually selected to  
7 serve in this case will serve in the role of the judges  
8 of the facts, and the jurors who are selected will make  
9 the sole determination about what the facts are in the  
10 case.

11                  Now, my job as the Judge is to rule on  
12 questions of law, evidence, procedure, and to control  
13 the decorum and flow of evidence through the courtroom.  
14 I want to say a couple things to you about our judicial  
15 system that hopefully will put things in a proper  
16 perspective as we head toward your service -- some of  
17 your service as jurors in this case.

18                  In any jury trial -- in every jury trial,  
19 there are -- other than the parties themselves, there  
20 are three principal participants, the jurors, the Judge,  
21 and the lawyers.

22                  Now, with regard to the lawyers, our  
23 judicial system is an adversary system which means  
24 simply that during the trial, each of the parties will  
25 seek to present through their lawyers their respective

1 cases to the jury in the very best light possible.

2           Now, lawyers are frequently criticized by  
3 the public and in the media, and the Court has observed  
4 that this criticism is often the result of a basic  
5 misunderstanding of our adversary system in which the  
6 lawyers act as advocates for the competing parties. As  
7 an advocate, a lawyer is ethically and legally obligated  
8 to zealously assert his or her client's position under  
9 the rules of our court system. And by presenting the  
10 best case possible on behalf of their clients, the  
11 lawyers hopefully will enable the jury to better weigh  
12 the relevant evidence and determine the truth and arrive  
13 at a just verdict based on that evidence.

14           Our American system of justice has served  
15 our country well for over 200 years, and America's  
16 lawyers have been and continue to be a critical part of  
17 that process. So as we go forward and as we begin the  
18 trial in this case, even though I may occasionally frown  
19 or growl at the lawyers from time to time, that's simply  
20 because I'm trying to make sure they stay within the  
21 boundaries of our adversary system and the rules of  
22 procedure. But the members of the jury that are  
23 selected from this panel need to keep in mind that they  
24 are simply doing their jobs, and I think it's important  
25 for everyone to be aware of that as we go forward.

1                   Also, ladies and gentlemen, I want you to  
2 understand that those of you who are selected to serve  
3 as our jury during the trial of this case, you'll notice  
4 that I am going to do my very best to make sure that you  
5 have no idea about what I think of the evidence because  
6 deciding the facts from the evidence is the jury's job,  
7 not the Judge's job. So you should not take any  
8 expressions that come from me or that you think come  
9 from me as something to consider or as a factor in  
10 making your decision about what the ultimate facts in  
11 this case are.

12                   At this time, we'll let counsel for each  
13 of the parties address the panel. We'll start with  
14 Plaintiff's counsel.

15                   Mr. Capshaw, you have 30 minutes. Would  
16 you like a warning?

17                   MR. CAPSHAW: Yes, sir. Five-minute  
18 warning.

19                   THE COURT: All right. You may proceed.

20                   MR. CAPSHAW: Thank you, Your Honor.

21                   Ladies and gentlemen, my name is Calvin  
22 Capshaw, and I represent SimpleAir in this lawsuit.  
23 Good morning. I want to thank you all for your service  
24 and for being here.

25                   I have two children. I have a

1 17-year-old named Hannah, and she's at Baylor University  
2 now as a freshman. Her mother is now with her. Her  
3 mother's name is Bonnie. She is a costumer for Artsview  
4 Children's Theater in Longview. My oldest daughter is  
5 Amanda. She's a theater major. She's getting her  
6 Master's at SMU in Dallas. I hope you'll join me in  
7 wishing that she'll go date across the street at  
8 Southwestern Medical School, instead of in the Theater  
9 Department. I hope for that, but that's not happening.  
10 I work with Capshaw DeRieux. It's a law firm with  
11 offices in Gladewater. I've been there since 2008.  
12 Before that, I worked for a law firm in Longview. I  
13 went to Baylor University and graduated from there with  
14 a law degree. I was on one jury once. Someone picked  
15 me, and it was a civil case.

16 I want to begin my questions to you by  
17 introducing you to SimpleAir. SimpleAir is a company  
18 formed by two inventors, Mr. Payne and Mr. Von Kaenel,  
19 and their business partner. And SimpleAir owns a patent  
20 that has to do with sending wireless notification  
21 messages to computing devices about new information  
22 that's on the Internet. And one of the -- the patent  
23 that they own, the '914 patent, is alleged to be  
24 infringed by Defendant Google. Google is a U.S.-based  
25 company, and they sell Internet products and services

1 that relate to searches, messaging services, and  
2 advertising. Now, it's the messaging services that are  
3 involved in the case.

4 I want to ask anybody on the panel if you  
5 or your spouse have ever worked for Google, Motorola, or  
6 Motorola Mobility? Has anybody on the panel -- okay. I  
7 take it by your silence that no one has worked for  
8 Google or their spouses work for Google.

9 Does anyone own stock in Google,  
10 Motorola, or Motorola Mobility?

11 Now, some of the attorneys that represent  
12 Google are Ms. Jennifer Parker Ainsworth. She's with  
13 Wilson Roberts & Cornelius in Tyler. Does anybody know  
14 Ms. -- Ms. Ainsworth or have had any dealings with her  
15 law firm? Would you please raise your hand?

16 Another attorney that may be involved  
17 helping Google in this case is Jessica Hannah. Ms.  
18 Hannah used to work for Judge Love in Tyler. She's now  
19 an attorney with Kilpatrick Townsend. Does anybody know  
20 Ms. Jessica Hannah? Okay. Thank you.

21 Now, I'm going to talk very briefly to  
22 you about the patents and technology in a minute, but I  
23 wanted to mention something about voir dire. And when I  
24 served on a civil jury, the people -- some of the folks  
25 that I was with -- was with thought that if during voir

1 dire they didn't say anything, if they kept quiet, that  
2 they might avoid being on the jury panel. And I can  
3 tell you that when you don't say anything and you're  
4 quiet when the lawyers are asking questions, they'll  
5 just assume that you agree with them and you enhance  
6 your chances of making it to the panel. So it's very  
7 important that you -- you answer questions and speak up  
8 because this is your chance to talk to the lawyers.

9           Now, I'm sure you wanted to all -- all  
10 wanted to come to court today being fair to both sides  
11 and not leaning to one side or the other. However,  
12 personal beliefs in life sometimes influence how we look  
13 at things. For example, just from my personal life, I  
14 had a bad experience in a construction matter, my wife  
15 and I. And we didn't get involved in a lawsuit, but  
16 it's something we won't talk about to this day. It  
17 consumed two years of our life. And I would probably be  
18 the wrong kind of a juror in a construction dispute. So  
19 that's the kind of thing I'm talking about, and leaning  
20 is what the law calls bias or prejudice. Bad words  
21 outside the courthouse, but it just means you start out  
22 leaning to one side or the other. So that's why I want  
23 you talking to me and trying to find out whether today  
24 you're leaning one way or the other before you hear the  
25 evidence.

1                   Now, Judge Gilstrap has allowed me to  
2 talk to you really briefly about the -- about the case  
3 before I start asking questions.

4                   Now, this is a patent infringement case  
5 as you know about a patent that SimpleAir owns. It's  
6 the '914 patent, and that's how you'll hear it referred  
7 to.

8                   Now, Google provides a feature on its  
9 smartphones and computers that we contend uses  
10 SimpleAir's invention without our permission.

11                  SimpleAir's '914 patent was born in late  
12 1995 when the Internet was just beginning to get  
13 popular. And at that time, people really didn't know  
14 how to use the Internet. And it was a lot of  
15 information out there, but people didn't know how to  
16 access it. So that was before Google and other people  
17 had Internet everywhere you went.

18                  Mr. Payne and Mr. von Kaenel, who are  
19 here in the courtroom today, and their co-inventors  
20 thought about how to make it easier for people to find  
21 information that they cared about on the Internet,  
22 information that was available, and then tell people how  
23 to find their way to get that information.

24                  And their solution was a notification  
25 service that would send user's computer an alert when

1 there was new information on the Internet. The user  
2 would sign up to receive notifications about the things  
3 they cared about, like breaking news; or if you're a  
4 baseball fan like me, baseball scores. And when  
5 something happened on the Internet, Mr. von Kaenel and  
6 Mr. Payne's invention would send a wireless alert to the  
7 user's computer, and it would pop up in an application  
8 that matched the information.

9           So if you got a breaking news alert from  
10 CNN, it would pop up on your CNN application. And then  
11 the user could go back to the Internet, find CNN, and  
12 read more about the matter they were interested in. The  
13 idea was more than a decade ahead of its time, and  
14 Mr. Payne and his co-inventors applied for a patent and  
15 received the '914 patent.

16           Now, to finish up, SimpleAir contends  
17 that -- that Google infringes the '914 patent because it  
18 provides a notification service that uses the patent's  
19 technology. And the two products you're going to hear  
20 about are Android Cloud to Device Messaging Service, or  
21 C2DM, and Google Cloud Messaging Service. And those are  
22 applications you see on Android and other smartphones.

23           How many of you have an Android  
24 smartphone? Anybody?

25           Okay. We've got some with their hands.

1 All right. If you'll just keep them up. Ms. Palmer --  
2 Ms. -- excuse me -- Ms. Palmer.

3 JUROR PALMER: Yes.

4 MR. CAPSHAW: Okay. And Ms. Brown,  
5 Mr. Murray, and Ms. Nolan.

6 Oh, I'm sorry. Thank you, Mr. Pemberton.

7 JUROR DARDEN: I've got one, too.

8 MR. CAPSHAW: Thank you, Mr. Burnam  
9 (sic).

10 JUROR DARDEN: Darden.

11 MR. CAPSHAW: Darden. Sorry.

12 Ms. Palmer, do you get message alerts on  
13 your Android phone?

14 JUROR PALMER: Yes, sir.

15 MR. CAPSHAW: How many applications do  
16 you get those alerts on?

17 JUROR PALMER: Probably two.

18 MR. CAPSHAW: Okay.

19 JUROR PALMER: Maybe three.

20 MR. CAPSHAW: Okay. Is that a feature  
21 that you find -- that you find useful?

22 JUROR PALMER: Yes.

23 MR. CAPSHAW: Who agrees with Ms. Palmer?  
24 Do you find your alert features useful on your Android  
25 phones?

1                   I see some of you nodding. Okay. Thank  
2 you.

3                   Now, I want to get to -- to patent  
4 lawsuits and lawsuits in general. There's one patent at  
5 issue in the case that was issued by the Patent and  
6 Trademark Office, and that's the '914 patent. And you  
7 saw the video this morning. The Patent Office issues  
8 patents, but they don't enforce patents, so if I have a  
9 patent that says I own something, the only place I can  
10 enforce that patent is the United States District Court.

11                  Is there anybody who believes on the  
12 panel that a person should not come to court to enforce  
13 their patent rights? If you would raise your hand, if  
14 you have that belief.

15                  Is there anybody on the panel that  
16 believes that we have too many patent lawsuits?

17                  Okay. I take it by your silence that no  
18 one feels that way.

19                  Now, there -- I've often heard it said  
20 that people fall kind of into two camps when it comes to  
21 patents. One group says that patents are great  
22 inventions -- are great things. They promote  
23 inventions; they help us compete in the world market.

24                  And without intellectual property, you  
25 won't have as much research and development, because

1 people wouldn't justify all the effort it takes to  
2 invent and get patents. That's one group.

3           The second group believes that patents  
4 shouldn't be protected by the Constitution; that we  
5 should have a free market. If you get a product out  
6 there whether it infringes a patent or not, you should  
7 be able to do that free from any kind of -- any kind of  
8 patent protection. That's Group 2.

9           I want to ask a few of you if you fall  
10 into one of those camps.

11           Mr. Brooks, do you have a view one way or  
12 the other where -- about patents and patent protections?

13           JUROR BROOKS: No, sir.

14           MR. CAPSHAW: You're shaking your head  
15 no. Okay, thank you, sir.

16           Mr. Dilday, you're close to the  
17 microphone. Hi.

18           JUROR DILDAY: Hello.

19           MR. CAPSHAW: Do you fall into either one  
20 of those groups?

21           JUROR DILDAY: Yes. I believe that they  
22 should be able to be protected.

23           MR. CAPSHAW: Thank you, sir.

24           Let me see if we can ask Mr. Williams.  
25 Mr. Williams, thank you, sir. If I can pick on you for

1 a minute.

2 JUROR WILLIAMS: Yes, I do believe they  
3 should be able to be protected.

4 MR. CAPSHAW: Thank you.

5 And, Mr. Pemberton, how about you, sir?

6 JUROR PEMBERTON: Yes, sir.

7 MR. CAPSHAW: All right. Thank you.

8 How many people agree there are too many  
9 lawsuits in general?

10 Going to be a lot of you. And there are  
11 a lot of lawsuits, even frivolous lawsuits. When I was  
12 a law clerk with Judge Steger, one time I saw a lawsuit  
13 by an inmate because he wasn't allowed to wear his socks  
14 in the shower. He didn't want to take a communal  
15 shower, I guess, with his feet exposed. But I saw that  
16 lawsuit. I don't think that one had a lot of merit.

17 But I want to talk to some of you that  
18 may have had experience as a defendant in a lawsuit.

19 Has anybody had experience that perhaps  
20 you were a defendant in a lawsuit that maybe gives you  
21 an attitude about lawsuits in general? Would you raise  
22 your hand?

23 Is there anybody who -- some of you  
24 filled out a questionnaire and you had some experience  
25 as to lawsuits. Is there anybody who had an experience

1 with a lawsuit that maybe was negative or difficult for  
2 you that causes you to maybe have a negative attitude  
3 about people who come to Court? Is there anybody who  
4 feels that way.

5                   Okay. I take it by your silence that no  
6 one feels --

7                   JUROR POWELL: I haven't had any --

8                   MR. CAPSHAW: I'm sorry. Thank you, sir.  
9 Mr. Powell.

10                  JUROR POWELL: I haven't had any court  
11 experience, but in my opinion, I think a lot of  
12 people -- not all people, but I think a lot of people do  
13 take advantage of some of the freedoms that are meant to  
14 protect the hard-working American and use it as an  
15 escape goat to get ahead the easy way.

16                  MR. CAPSHAW: And because you feel that  
17 way, sir, do you come to the courtroom today sort of  
18 leaning towards more towards the Defendant?

19                  JUROR POWELL: I'm not really leaning  
20 either way. I don't use technology very much. I always  
21 say that I hate my cell phone, but at the same time, in  
22 the today's world, you can't live without one. So I'm  
23 not really leaning one way or another. I'm just -- in  
24 my opinion, a lot of people take things too far as far  
25 as going to court. Not all the times. There's a lot of

1 things that do need to go to court, but -- I mean, a lot  
2 of people go -- take things too far.

3 MR. CAPSHAW: Thank you, Mr. Powell.

4 Based on how you feel about that, do  
5 you -- do you have any feelings about this lawsuit  
6 before you've heard any evidence?

7 JUROR POWELL: I don't know anything  
8 about it, so, no, I don't have any feelings about it.

9 MR. CAPSHAW: You haven't formed any  
10 beliefs about it.

11 JUROR POWELL: No.

12 MR. CAPSHAW: Thank you, sir. I  
13 appreciate your candor.

14 Now, when you're -- if you're selected  
15 for this panel, you'll hear in the case about the fact  
16 that SimpleAir has brought a patent infringement  
17 litigation suit against other Defendants. For example,  
18 Microsoft and Apple and those companies eventually  
19 licensed the SimpleAir patents.

20 Is there anyone who feels like they might  
21 lean towards the Defendant because SimpleAir enforced  
22 its patents against other companies, like Microsoft and  
23 Apple? Does anybody hold that against SimpleAir?

24 Okay. I take it by your silence, you  
25 don't feel that way.

1                   Is there anybody on the panel that  
2 belongs to an organization whose purpose is either to  
3 lobby the legislature or be involved with lawsuits and  
4 addressing the lawsuit situation?

5                   Does anybody get literature from any of  
6 those organizations?

7                   Yes, ma'am, Ms. Cerliano?

8                   JUROR CERLIANO: Totally unrelated to  
9 this, I've belonged to for 39 years and have been a  
10 state delegate to our local president for my local Texas  
11 State Teacher's Association. And while our primary  
12 purpose is not leg -- lobbying, it is a part of our  
13 mission to lobby the state legislature on education  
14 issues.

15                  MR. CAPSHAW: Concerning education?

16                  JUROR CERLIANO: Right. Right. It is  
17 lobbying. It's not related to IT, but it is lobbying.  
18 And that is the way you phrased your question.

19                  MR. CAPSHAW: Yes, ma'am. Thank you. I  
20 appreciate that.

21                  Does anybody -- is anybody a member of or  
22 get literature from the East Texas Against Lawsuit Abuse  
23 or the Texans for Lawsuit Reform? Anybody get that?

24                  Now, who like me reads the Wall Street  
25 Journal?

1                   Okay. Ms. Palmer, you read the Wall  
2 Street Journal. Anybody else?

3                   Ms. Palmer, when you get the Wall Street  
4 Journal, have you ever heard any articles about patents  
5 and patent litigation in the paper?

6                   JUROR PALMER: I probably glanced at them  
7 but not taken them in internally to remember them.

8                   MR. CAPSHAW: Do you just go to that  
9 column on the left and read the news read quick and then  
10 pitch it?

11                  JUROR PALMER: (Nods head.)

12                  MR. CAPSHAW: That's what I do, too.  
13 Okay. Thank you.

14                  All right. I want to talk to you a  
15 little bit about patents and patent validity. Judge  
16 Gilstrap will tell you about the presumption of  
17 validity. A patent that goes to the Patent Office is  
18 presumed valid, and that's a presumption. And we don't  
19 have to prove that to you, that the patent is valid.

20                  Does anybody have a problem or feel that  
21 that's not fair, that patents are presumed valid when  
22 they're issued by the Patent Office?

23                  Okay. No hands. Thank you.

24                  Does anybody agree with this statement:  
25 The U.S. Patent and Trademark Office probably makes a

1 lot of mistakes when issuing patents. And it issues a  
2 lot of patents that are not any good? Anybody agree  
3 with that?

4 Yes, ma'am. Ms. Cerliano, No. 22?

5 JUROR CERLIANO: I believe with the  
6 exponential growth in technology and a lot of other  
7 areas nowadays that it's practically impossible for the  
8 Patent Office to research everything and always be  
9 right.

10 MR. CAPSHAW: Okay. Who agrees with  
11 Ms. Cerliano about that?

12 Yes, sir, Mr. Powell.

13 Anyone else?

14 Mr. Howell.

15 Ms. Cox, did you raise your hand? Okay.  
16 Thank you.

17 Ms. Cox and Mr. Connett (sic). And we  
18 have No. 23, Mr. Murray, No. 25, Mr. Darden.

19 JUROR DARDEN: Right.

20 MR. CAPSHAW: Thank you, sir.

21 And Ms. Nolen. All right. Thank you.

22 Now, there are some people today who,  
23 because of the way things are, believe the government is  
24 so out of touch or out of control that they're not  
25 interested in anything, an agency of the government,

1 like the U.S. Patent Office has to say. And it's okay  
2 to feel that way, but I need to ask you: Does anybody  
3 feel that way; that the government is so out of control  
4 that you don't have any interest in what a government  
5 agency might say about something?

6 Okay. I don't see any hands.

7 Now, SimpleAir is a company founded by  
8 the inventors of the patent, the '914 patent. And  
9 SimpleAir owns the patents, but it does not manufacture  
10 cell phones, smartphones. It does not offer a messaging  
11 service.

12 Is there anyone here who believes that a  
13 company that owns patents and invents but doesn't  
14 manufacture or sell -- is there anybody believes they're  
15 entitled to less protection of their patent rights than  
16 a company that sells products?

17 Okay. I don't see any hands. Thank you.  
18 Is there anybody who believes -- this is a little bit  
19 different question -- that companies who do not  
20 manufacture or sell products should not even have  
21 patents? Is there anybody who feels that way?

22 Okay. I don't see any hands. All right.  
23 Thank you.

24 Now, I want to talk to you and ask you a  
25 few questions about burden of proof, the preponderance

1 of the evidence burden of proof. Now, SimpleAir has the  
2 burden of proving by a preponderance of the evidence its  
3 case on infringement and also on damages. And we gladly  
4 accept that burden. And as Judge Gilstrap described  
5 that to you, it was -- our burden is to tip the Scales  
6 of Justice just ever so slightly on infringement and  
7 damages to carry our burden.

8                   Is there anybody that would have a  
9 problem applying that burden and following Judge  
10 Gilstrap's instructions in this case on preponderance of  
11 the evidence?

12 Okay. I don't see any hands.

13                   Is there anyone else who thinks this is a  
14 big case; it's important so SimpleAir's burden on  
15 infringement and damages ought to be heavier? Anybody  
16 feel our burden out to be heavier than a preponderance  
17 of the evidence?

18 All right. Now, the Defendant, as one of  
19 their defenses, Google will say that our patent is  
20 invalid. And Judge Gilstrap's already talked to you  
21 about that burden being a heavier burden; that you have  
22 to tip the scales substantially and that you have to  
23 have an abiding conviction that the matter is highly  
24 probable.

25 | Is there anybody that would have trouble

1 applying that heavier burden to Google's claim that the  
2 '914 patent is invalid? Is anybody -- anybody have a  
3 problem with that?

4 Now, some people say it's not fair that  
5 the Plaintiffs have a lesser burden to prove  
6 infringement and damages than the Defendant has to prove  
7 invalidity. And it's okay to feel that way.

8 Is there anybody that feels it's not fair  
9 that Google has the burden to prove by clear and  
10 convincing evidence that the patent is invalid and that  
11 that burden is heavier than SimpleAir's burden? Anybody  
12 think that's unfair?

13 I don't see any hands. Thank you.

14 Has anybody ever been elected to a  
15 position like a school board president, a water  
16 district, a hospital district, where you were elected  
17 and then appointed by your fellow board members to be a  
18 chairperson or an officer?

19 Ms. Cerliano, I know you were a  
20 representative.

21 Anybody else had that experience where  
22 you were elected?

23 Anybody been on a committee and been a  
24 chairperson of that committee?

25 Ms. Cox, No. 10. Yes, ma'am, were you

1 elected as a committee -- as a chairperson?

2 JUROR COX: Yes, sir. I have several  
3 different committees at school and foreman of a jury  
4 once.

5 MR. CAPSHAW: Thank you.  
6 Anyone else?

7 Ms. Palmer. I don't mean to pick on you,  
8 Ms. Palmer.

9 JUROR PALMER: That's okay. I figured  
10 I'd be a natural target. I've served on church  
11 committees. I've served on Chamber of Commerce  
12 committees, various civic organizations.

13 MR. CAPSHAW: Okay. Thank you very much.  
14 All right. I want to ask a little bit  
15 different question. Has anybody here ever had an  
16 opportunity -- I'm sorry. Thank you. Yes, sir?

17 JUROR DARDEN: Just various civic and  
18 church committees.

19 MR. CAPSHAW: Okay.

20 THE COURT: Let's wait until you get the  
21 microphone, Mr. Darden, so we can hear you.

22 If you'll stand up, sir.

23 Go ahead and give us your answer.

24 JUROR DARDEN: Just a member -- Steve  
25 Darden. Just a member of civic and church committees.

1                   MR. CAPSHAW: Yes, sir. And you were the  
2 chairperson?

3                   JUROR DARDEN: Chairperson, yes.

4                   MR. CAPSHAW: Thank you, Mr. Darden.

5                   Has anybody had an opportunity to join a  
6 collective bargaining unit or a union and declined to do  
7 so?

8                   Okay. Mr. Bryant? Mr. Bryant, did you  
9 have an opportunity to join a collective bargaining unit  
10 and decided not to?

11                  JUROR BRYANT: Yes, I have.

12                  MR. CAPSHAW: Have you ever also been a  
13 member of collective bargaining unit?

14                  JUROR BRYANT: Yes, I have.

15                  MR. CAPSHAW: Done both?

16                  JUROR BRYANT: Yes, sir.

17                  MR. CAPSHAW: Anyone else like Mr. Bryant  
18 who had an opportunity to join a collective bargaining  
19 unit and you declined?

20                  Okay. Ms. Cox -- excuse me --  
21 Ms. Cerliano.

22                  JUROR CERLIANO: I was saying -- I was  
23 pointing out that it's illegal in my profession.  
24 Collective bargaining doesn't exist and school districts  
25 are considered public employees, so collective

1 bargaining is not an option for me.

2 MR. CAPSHAW: Yes, ma'am. Thank you.

3 Anybody a member of a collective  
4 bargaining unit or union?

5 Okay. I've got three: 2, Mr. Prestidge;  
6 4, Mr. Brooks; and Mr. Pemberton.

7 Mr. Prestidge, do you remember if it was  
8 a collective bargaining unit or a union, I guess.

9 JUROR PRESTIDGE: Yes, sir. Union.

10 MR. CAPSHAW: Yes, sir. And that was for  
11 10 years, if I'm remembering correctly?

12 JUROR PRESTIDGE: Yes, sir.

13 MR. CAPSHAW: Thank you, sir.

14 Mr. Brooks, are you a member of a  
15 collective bargaining unit?

16 JUROR BROOKS: Teamsters.

17 MR. CAPSHAW: Teamsters. And you're  
18 still a member now?

19 JUROR BROOKS: Always.

20 MR. CAPSHAW: Thank you, sir.

21 Mr. Pemberton?

22 JUROR PEMBERTON: The US Steelworkers of  
23 America.

24 MR. CAPSHAW: Okay. All right.

25 JUROR PEMBERTON: Thirteen years.

1 MR. CAPSHAW: Thirteen years. Thank you,  
2 sir.

3 Ms. Cerliano, any NEA/TSTA?

4 JUROR CERLIANO: That's a part of -- it  
5 is a part of the NEA, which is a union and does do  
6 collective bargaining in other states, but it's illegal  
7 in Texas.

8 MR. CAPSHAW: Thank you. All right. Is  
9 anybody a member of the Chamber of Commerce? We have  
10 any Chamber of Commerce members here? Okay.

11 THE COURT: Five minutes, Mr. Capshaw.

12 MR. CAPSHAW: Thank you, sir.

13 Now, ladies and gentlemen, I'm going to  
14 try to wrap up quickly. I want to miss any growls from  
15 the Judge, so I'm going to try to wrap it up.

16 In this case you're going to hear later,  
17 SimpleAir is going to have a damage expert that's going  
18 to say that SimpleAir's royalties in this case should be  
19 \$126 million. And my question really doesn't concern  
20 damages. But I want to know if there are any of you for  
21 whatever reason that thinks an award up to \$126 million  
22 is just simply too much money to give to one company,  
23 doesn't matter what the evidence is, doesn't matter the  
24 value of the -- the invention, doesn't matter what the  
25 evidence shows, that's just too much money. Does

1 anybody feel that way? Okay. I take it by your  
2 silence, that -- that no one does.

3 All right. I'm going to close up, and  
4 then turn it over to Google. But sometimes, you know,  
5 people wish I would have asked a question. I don't ask  
6 all the questions that I should probably, and I'm not  
7 perfect. So after all you've heard, there may be some  
8 of you that are sitting there that are thinking, well,  
9 if that lawyer had just asked me the right question, he  
10 would not want me on his jury. And so I'm going to ask  
11 you right now, is there anyone who is thinking that way  
12 right now, that I should have asked you a question and  
13 didn't?

14 All right. Is -- after all you've heard  
15 and you haven't heard any evidence yet, is there anybody  
16 that just maybe -- maybe feels like they're leaning  
17 toward the Defendant Google in this case before we start  
18 the case? Anybody feel that way?

19 Well, ladies and gentlemen, I thank you  
20 for your time. I think that those of you selected will  
21 get to participate in a great American tradition. I  
22 think you'll enjoy your service, and I'll look forward  
23 to working with you, as does SimpleAir.

24 Thank you, Your Honor.

25 THE COURT: All right. Ms. Ainsworth,

1 you may address the panel on behalf of the Defendant.

2 MS. AINSWORTH: Thank you, Your Honor.

3 THE COURT: And would you like a warning?

4 MS. AINSWORTH: Yes, Your Honor, five  
5 minutes, please.

6 THE COURT: All right. You may proceed.

7 MS. AINSWORTH: Good morning, ladies and  
8 gentlemen. We met a few minutes ago, but my name is  
9 Jennifer Ainsworth and I represent Google, along with my  
10 co-counsel, and we look forward to presenting this case  
11 to the people that are eventually selected on this jury.

12 Let me start out the same way that you  
13 guys did and answer the same questions that you did for  
14 the Court. I live in Tyler. I've got two sons who are  
15 10 and 13. I work at a -- at a law firm in Tyler, and  
16 I've been there about 12 years. I worked in Houston  
17 before that. I went to -- I'm from Hallsville  
18 originally; graduated from Hallsville High School. And  
19 then went to University of Texas and then UT also for  
20 law school. My husband's name is Charlie Ainsworth, and  
21 he's a lawyer also in Tyler. And I have never served on  
22 a jury. I've been on jury panels like you're doing this  
23 morning, but for some reason they've never selected me.  
24 So that's my background, and we appreciate you sharing  
25 your background with us.

1                   So I'd like to start out -- the Judge --  
2 Judge Gilstrap gives us an opportunity to take just a  
3 couple of minutes and tell you a little bit about what  
4 we think the issues are in the case so you have some  
5 context. And then I want to ask, you know, some of your  
6 opinions and thoughts.

7                   As you may have kind of gathered already,  
8 this case has to do with smartphones and smartphone  
9 technology, and particularly the issue of how  
10 notifications or messages are sent to smartphones.

11                  Google's come a long way from when it  
12 started. It's an Internet search engine started by two  
13 guys who were students, but they've developed other  
14 products and services. And one of the things that they  
15 developed a few years ago is the Android operating  
16 system.

17                  And some of you said you had Android  
18 phones. Android is an operating system that can be  
19 integrated into smartphones, and those are built by  
20 other companies, for example, Samsung, or LG, they're  
21 some of the companies that manufacture Android phones.  
22 Google provides the Android operating system free of  
23 charge. It's called Open Source. And you may hear  
24 about some of that in the case.

25                  Now, the Plaintiff in this case

1 represented by Mr. Capshaw, SimpleAir, is saying that  
2 Google is infringing their patent in the way messages  
3 are sent from application developers to smartphones. We  
4 disagree. Google says that we did not infringe their  
5 patent. And so the issue in the case is going to --  
6 you're going to hear about Google messaging service, and  
7 -- and Mr. Capshaw mentioned that earlier.

8           Some of you said that you had smartphones  
9 that have apps on them. Apps are applications that are  
10 usually developed by other companies like, for example,  
11 Facebook or The Weather Channel, ESPN. And you might  
12 install them on your phones. Google has some apps of  
13 its own, but most of them are like GMail. But most of  
14 the apps come from outside companies. And so the  
15 messaging service is a system where the app companies  
16 can convey a message to a cell phone or a smartphone.  
17 The app provider sends a message to Google who forwards  
18 that on to the smartphone.

19           Now, we believe that Google's messaging  
20 system operates in a different way than what's covered  
21 by SimpleAir's patent, and we also say that their patent  
22 should not have been issued and that it's not valid --  
23 or it's invalid.

24           THE COURT: We need to move on to  
25 specific questions, Ms. Ainsworth.

1 MS. AINSWORTH: Thank you, Your Honor.

2 Let me ask you first if anyone here knows  
3 any of the counsel that represents SimpleAir, Mr.  
4 Capshaw or Ms. DeRieux from her firm in Gladewater? Has  
5 anybody worked with them or been represented by them in  
6 the past? Or any of the other counsel, Mr. Eichmann and  
7 Mr. Dovel representing SimpleAir?

8 Anybody here -- I know that Mr. Capshaw  
9 asked if anybody had rep -- had worked for Google.  
10 Anybody here has not used Google? Anyone here who has  
11 not used any of our services or products? That's great.  
12 We're -- we're glad that you do.

13 Does anyone -- and let me start with the  
14 folks who are in the jury box. Anyone have any opinions  
15 about Google or their reputation or their policies or  
16 their products that would make you start out this case  
17 with some hard feelings or bad feelings about Google?  
18 Anything that you've run into or heard that you would  
19 hold against Google? Don't worry about hurting our  
20 feelings because this is the point that we need to know  
21 it.

22 And, Mr. Bryant, if I could ask you --  
23 have you had some kind of issue in the past that -- that  
24 you didn't like?

25 JUROR BRYANT: Yes, ma'am.

1 MS. AINSWORTH: Okay. Can you tell us  
2 generally what that was?

3 JUROR BRYANT: I'm a -- I'm a member of  
4 several online forums that have to do with firearms, and  
5 Google has in the past year stopped allowing any firearm  
6 industries to advertise with them, sell their products  
7 through their services, or whatever. And I -- I think  
8 that's about as un-American as you can get in this  
9 country.

10 MS. AINSWORTH: So you believe that  
11 policy is un-American, and I gather that's something  
12 that -- that you believe in fairly strongly?

13 JUROR BRYANT: Yes, ma'am, it is.

14 MS. AINSWORTH: Okay. Is that something  
15 that you would hold against Google if you were sitting  
16 on the jury in this case?

17 JUROR BRYANT: In a patent case, I don't  
18 think it would apply.

19 MS. AINSWORTH: What if you heard about  
20 Google's policies and procedures in this case and that  
21 was something that you had to -- that you had to hear  
22 evidence about. Would you start out Google behind  
23 SimpleAir at the beginning of the case?

24 JUROR BRYANT: No, I wouldn't. I -- I  
25 believe in let's get to the truth. I think that's --

1 that's the root of everything right there. We got to  
2 get to the truth.

3 MS. AINSWORTH: Okay. Thank you very  
4 much. I appreciate that.

5 JUROR BRYANT: Okay.

6 MS. AINSWORTH: Let me ask the folks that  
7 are sitting in the -- in the benches here. Like Mr.  
8 Bryant, has anyone there had any issues or concerns with  
9 Google that you might hold against the company as we  
10 start this case? Bad experiences? Problems with a  
11 product? Anything like that? Okay. I don't see any  
12 hands. Thank you.

13 As you've heard, we're going to be  
14 talking about smartphones, and in particular about  
15 Android smartphones.

16 Let me start back with the people in the  
17 jury box. Let me ask you kind of a general question.  
18 When you purchased your smartphone -- there's a lot of  
19 different smartphones on the market these days -- when  
20 you purchased yours, what made you decide on that  
21 particular smartphone? Anybody have any, you know,  
22 features, things they like, things they didn't like?

23 Okay. I'm going to have to -- I'm going  
24 to have to call on someone.

25 Mr. Dilday, could you tell us what things

1 made you pick one phone over another?

2 JUROR DILDAY: I have currently the  
3 iPhone 4S, and it's simply because I had an  
4 Android-based phone prior. Everybody was raving about  
5 it that I was around, and so I figured I'd give it a  
6 shot. And that's about it. I mean, I do utilize it. I  
7 do like it, but I also liked my previous phone, as well.

8 MS. AINSWORTH: Okay. So you had an  
9 Android phone in the past. You don't have one now. Is  
10 that -- would that cause you any problem if you're  
11 hearing about Android issues in this case?

12 MR. DILDAY: No, ma'am. My wife has an  
13 Android phone, so it -- it doesn't matter to me.

14 MS. AINSWORTH: While I've got you --  
15 while you've got the microphone, if you don't mind ask  
16 -- can you tell us a little bit about your business.

17 You said that it deals with telephone  
18 technology?

19 JUROR DILDAY: Yes, ma'am. We are an  
20 inmate telephone communications company. We actually  
21 originated with old pay phones that we served in  
22 transition, then to the inmate industry as the cell  
23 phones took over.

24 MS. AINSWORTH: Do you deal with  
25 smartphone technology as part of your daily business?

1 JUROR DILDAY: No, ma'am, not as far as  
2 the technology portion, no, ma'am. Phone calls to  
3 smartphones or cellular phones, yes, ma'am, but not  
4 actual -- not at this moment.

5 MS. AINSWORTH: Thank you very much.

6 JUROR DILDAY: You're welcome.

7 MS. AINSWORTH: Let me -- let me ask a  
8 more general questions about your smartphones. You've  
9 heard that one of the issues in the case has to do with  
10 notifications or messages and how they're sent to  
11 smartphones. When you bought your phone, did anybody  
12 take into account or make your decision based on how it  
13 handled notifications? Did anyone on the jury box take  
14 that into account when you made your decision? I don't  
15 see any hands there.

16 Did anyone take that into account -- the  
17 people sitting in the court, when you made your decision  
18 on what phone to purchase? Thank you very much.

19 We're obviously here today because  
20 SimpleAir has a patent, and they told you they believe  
21 that that's infringed. And we disagree. But we saw in  
22 your questionnaires that there were some people who knew  
23 somebody who had a patent or maybe had applied for a  
24 patent. And I wanted to follow up with a couple of  
25 people about that.

1                   Let's see, Mr. Williams, No. 15.

2                   JUROR WILLIAMS: Yes, ma'am.

3                   MS. AINSWORTH: It looked like -- had  
4 your father obtained a patent?

5                   JUROR WILLIAMS: Yes, ma'am.

6                   MS. AINSWORTH: Okay. What was that on?

7                   JUROR WILLIAMS: He and his wife. It was  
8 called a Spar-Pro. It was a sparring dummy, basically  
9 upper torso with a weighted base. My father used to be  
10 a Golden Gloves boxer and -- and boxed for years and I  
11 grew up around it. And he eventually -- selling it to  
12 -- or at least the idea to -- to police forces because  
13 the material was tense enough to accept thousands of  
14 rounds from firearms. And so they use it at police  
15 academies. And it's -- as far as I know, it's still  
16 being sold.

17                   MS. AINSWORTH: Do you know if -- was  
18 there ever any -- any situation where your father filed  
19 a lawsuit or had any litigation over his patent?

20                   JUROR WILLIAMS: Not that I was aware of.  
21 I know there's -- I mean, just like the case we're  
22 probably going to hear today -- I mean, there's --  
23 things can be so closely related, you know, when it  
24 comes to products or services, that some very minute --  
25 minute detail could be the main separation, you know,

1 between, you know, the Spar-Pro and its competition.

2                   So, you know, I believe it's -- if  
3 there's an idea that makes one product better than the  
4 other or one service better than the other, by all  
5 means, you know, protect that right.

6                   MS. AINSWORTH: And let me ask you. The  
7 fact that your father obtained a patent, you could say  
8 it sort of puts you in a similar position to SimpleAir  
9 because they own a patent that's going to be discussed  
10 in this case. Does that fact cause you to start out  
11 this case favoring SimpleAir over Google?

12                  JUROR WILLIAMS: Not at all. Not at all.

13                  MS. AINSWORTH: Thank you very much.

14                  I think Ms. Foster, No. 1, I believe, had  
15 you mentioned on your questionnaire that your son had  
16 developed a product or had he applied for a patent?

17                  JUROR FOSTER: He never applied for the  
18 patent. He developed a product and it was used for  
19 quite a long time to protect a computer device, I think,  
20 in the semitrucks, but he never applied for a patent.  
21 He talked about it, but just felt like it was not going  
22 to be worthwhile.

23                  MS. AINSWORTH: Okay. Is there anything  
24 about that experience with your son and hearing about  
25 that that would cause you to favor SimpleAir over Google

1 in this case?

2 JUROR FOSTER: No, I don't think so.

3 MS. AINSWORTH: Thank you very much.

4 Has anybody else on the panel -- either  
5 they or someone in their family obtained a patent or  
6 tried to obtain a patent?

7 Ms. Cox? Who was that, if you could tell  
8 us?

9 JUROR COX: My dad a long time ago  
10 developed and got a patent for -- it's funny, a bathroom  
11 toilet magazine holder.

12 MS. AINSWORTH: Important thing.

13 JUROR COX: Well, he thought it was, and  
14 he had them made and gave them away because he couldn't  
15 sell them. But, yes, he did get a patent. And then he  
16 complained because somebody else stole his idea, but he  
17 never did anything with it, so...

18 MS. AINSWORTH: Okay. So he thought  
19 someone had -- had used --

20 JUROR COX: Copied it, yes.

21 MS. AINSWORTH: Okay. But he didn't file  
22 a lawsuit?

23 JUROR COX: No, he didn't. He was a  
24 Baptist preacher. He didn't do that.

25 MS. AINSWORTH: Anything about that

1 experience that would cause you to favor SimpleAir?

2 JUROR COX: No, not really.

3 MS. AINSWORTH: Mr. Dilday, did you  
4 indicate that --

5 JUROR DILDAY: Yes.

6 MS. AINSWORTH: Do you have a patent or  
7 know someone who --

8 JUROR DILDAY: No, ma'am. Well, the  
9 company I work for, my brother-in-law's co-owner of  
10 that, and they've applied for different patents. I  
11 don't know exactly the content of each one of them, but  
12 I do know one of them had to do with three-way call  
13 detect, so...

14 MS. AINSWORTH: And do you know if those  
15 patents have issued, or is that process still pending?

16 JUROR DILDAY: I believe it's still  
17 pending, but I'm not certain as to the -- where -- where  
18 it actually lies at this point.

19 MS. AINSWORTH: Okay. Has there ever  
20 been any kind of litigation or suits having to do with  
21 those patents or those applications?

22 JUROR DILDAY: No, not those  
23 applications. I know that we were involved in a -- a  
24 lawsuit company-wise where we were told that our -- the  
25 company I worked for had infringed on a -- a patent, but

1 that was settled.

2 MS. AINSWORTH: When -- was that  
3 something fairly recent or when was that?

4 JUROR DILDAY: I believe it was in the  
5 last year.

6 MS. AINSWORTH: And the suit was brought  
7 against your company?

8 JUROR DILDAY: Yes.

9 MS. AINSWORTH: Was it resolved before  
10 it went to court?

11 JUROR DILDAY: Yes, ma'am.

12 MS. AINSWORTH: Okay. Is there anything  
13 about that circumstance that would cause you to favor  
14 SimpleAir over Google in this case?

15 JUROR DILDAY: No, ma'am.

16 MS. AINSWORTH: Thank you very much.

17 Anybody else in the jury box that either  
18 has a patent, you family -- someone in your family does?

19 How about in the audience, anybody have a  
20 patent or someone in their family?

21 Mr. Pemberton, were you wondering --  
22 okay. Sorry, I misunderstood.

23 Ms. Cox mentioned something about -- and  
24 her father's idea maybe being used by someone else. I  
25 want to ask if there's anyone who ever has seen a

1 product that had a new idea and thought that they  
2 thought of that product first or they thought of that  
3 idea first and someone was using it without their  
4 permission?

5                   Mr. Powell, have you had that situation  
6 in the past?

7                   JUROR POWELL: I wouldn't necessarily say  
8 that it's something that I have thought about and  
9 somebody else is using, but I am a welder. I have  
10 always -- even since I was a little kid, worked with my  
11 hands. If there's something that I think of that would  
12 help benefit me, I build it and I use it for myself. I  
13 do not try to sell it, don't try to patent it. It's  
14 something to benefit me, and I have built stuff and seen  
15 something similar later. But it's not like, oh, these  
16 people stole my idea. I do it to benefit and make my  
17 life easier. And what other people do is other people's  
18 business.

19                   MS. AINSWORTH: Is there anything about  
20 that experience or your -- the decisions that you made  
21 there that would cause you to start out this case  
22 favoring SimpleAir before you've heard any of the  
23 evidence?

24                   JUROR POWELL: No. All the stuff I do is  
25 little. I mean, it's just -- you know, they're

1 talking -- I mean, I get -- in fact, I have an MLB app  
2 on my phone. And every time the Texas Rangers score or  
3 the team they're playing scores, I get a notification  
4 that lets me know about it. I work nights. I can't  
5 watch the games. And so the -- it's not something as  
6 small as being around the house. I mean, it's  
7 worldwide. So their situation and my situation is  
8 completely different.

9 MS. AINSWORTH: Thank you very much. I  
10 appreciate it.

11 In your questionnaires, I think, Mr.  
12 Bryant, did you mention that maybe you had had an idea  
13 that you thought had been taken by someone else having  
14 to do with some packaging?

15 JUROR BRYANT: Seriously, I'm not trying  
16 to be funny, but yeah, I had stuck that on there. I was  
17 just laughing at myself. Many, many years ago, someone  
18 would take a bowling ball and put it in a cow patty. It  
19 could be sold as ashtrays. Two years later, they were  
20 doing it.

21 MS. AINSWORTH: Well, is there anything  
22 about that situation that would cause you to favor  
23 SimpleAir over Google in this case?

24 JUROR BRYANT: No, I don't think so.

25 MS. AINSWORTH: Thank you.

1                   Okay. Well, while I've got you,  
2 Mr. Bryant, if you don't mind, let me ask you: I think  
3 there's some people that indicated in there  
4 questionnaires that they had brought a lawsuit or  
5 thought about bringing a lawsuit for one reason or  
6 another through the years. Had you been in a situation  
7 where someone in your family had brought a lawsuit  
8 before?

9                   JUROR BRYANT: I did.

10                  MS. AINSWORTH: Okay. And was -- who was  
11 that against if -- and if you -- if I'm treading on  
12 something that's private.

13                  JUROR BRYANT: I cannot remember the name  
14 of the company. It was in 1965. It was frozen food. A  
15 tractor/trailer rig run a stop sign, run over me on my  
16 motorcycle.

17                  MS. AINSWORTH: So it was an injury that  
18 you suffered.

19                  JUROR BRYANT: Yes, ma'am.

20                  MS. AINSWORTH: That puts you sort of in  
21 the position of the Plaintiff in this case because  
22 they're the ones bringing this lawsuit: Would that  
23 cause you to start out this case favoring SimpleAir over  
24 Google?

25                  JUROR BRYANT: No, ma'am.

1 MS. AINSWORTH: And how long ago was  
2 that?

3 JUROR BRYANT: '64.

4 MS. AINSWORTH: Thank you very much.

5 Has anybody else in the jury box had a  
6 situation where they brought a lawsuit against somebody?  
7 Mr. -- Mr. Prestidge?

8 JUROR PRESTIDGE: Yes.

9 MS. AINSWORTH: What type of case was  
10 that, if you could tell us just in general?

11 JUROR PRESTIDGE: Defamation of character  
12 and slander.

13 MS. AINSWORTH: Okay.

14 JUROR PRESTIDGE: Contractor fired us  
15 all. Put out letters on us. Called us a bunch of  
16 shitheads. I sued them. It might be one day they don't  
17 call me one.

18 THE COURT: Mr. Prestidge, I'm sure  
19 that's an accurate answer, but I'm going to instruct you  
20 not to use profanity in this courtroom.

21 JUROR PRESTIDGE: Yes, sir.

22 MS. AINSWORTH: Mr. Prestidge, how long  
23 ago was that lawsuit?

24 JUROR PRESTIDGE: '86/'87.

25 MS. AINSWORTH: And has anyone else in

1 your family been involved in any kind of litigation?

2 JUROR PRESTIDGE: My wife fell at  
3 Walmart, injured herself. Walmart didn't want to do  
4 nothing. It's what they got lawyers for.

5 MS. AINSWORTH: The fact that you were  
6 involved or your wife was involved in -- in lawsuits in  
7 the past, does that make you in any way, before you hear  
8 this evidence, favor SimpleAir over Google?

9 JUROR PRESTIDGE: None at all.

10 MS. AINSWORTH: All right. Thank you,  
11 sir.

12 Let me ask the people sitting in the  
13 audience. There's -- anyone there that has been  
14 involved where you were in the position of bringing a  
15 lawsuit or thought about bringing a lawsuit, seriously  
16 considered it? Anybody?

17 Okay. And I just noticed a couple things  
18 in the questionnaires. Mr. Williams, let me ask you one  
19 other question. Did you consider bringing one in a  
20 case, but decided not to do that?

21 JUROR WILLIAMS: Yes, ma'am. It was a  
22 wrongful termination lawsuit against a local company,  
23 and the only attorneys locally that handled that type of  
24 suit were already in cahoots with the company I was  
25 trying to sue. And they basically hung the phone up on

1 me. And after about four months of pursuing other  
2 avenues, I gave up and just got another job.

3 MS. AINSWORTH: Anything about that  
4 experience, about considering filing a lawsuit that  
5 would make you have hard feelings about Google or make  
6 you lean toward the Plaintiff in this case?

7 JUROR WILLIAMS: No, ma'am, not at all.

8 MS. AINSWORTH: Thank you very much.

9 We're obviously here today because  
10 SimpleAir has sued Google. Does anybody have an issue  
11 or a problem with Google wanting to defend themselves in  
12 this case and wanting to bring the case to trial and put  
13 on our side of the case for you?

14 Does anybody have a problem with that, or  
15 would you hold that against Google?

16 I don't see anybody in the jury box or  
17 anyone in the chairs. Thank you.

18 Ladies and gentlemen, one of the other  
19 issues in this case is going to be whether SimpleAir's  
20 patent is valid or whether it should have been issued by  
21 the Patent and Trademark Office. Let me ask you if --  
22 Mr. Capshaw asked you some questions about whether  
23 people had opinions on one side about patents. Let me  
24 kind of ask you on the other.

25 Patents are issued by the Patent and

1 Trademark Office, and you heard a little bit about that  
2 on the video this morning. But does anybody feel like,  
3 you know, regardless of what the evidence is, regardless  
4 of what the Judge says, if a patent was issued by the  
5 United States Government, I could never find it invalid?  
6 If it was issued by a governmental agency, I don't care  
7 what the evidence is, there is no way I would ever find  
8 that invalid or question what was valid, does anybody  
9 feel that way?

10 Mr. Bryant, you feel that way?

11 JUROR BRYANT: Yes, ma'am, I do. If the  
12 Patent Office gives somebody a patent, it's their  
13 patent. It should never be invalidated until the patent  
14 time limit runs out.

15 MS. AINSWORTH: All right. Thank you  
16 very much.

17 Does anybody feel the same as Mr. Bryant,  
18 that, you know, outside of whatever the evidence is, it  
19 was issued by the Patent and Trademark Office and,  
20 therefore, it is valid and shouldn't be questioned?

21 Mr. Powell, you feel that way, too?

22 JUROR POWELL: I don't necessarily feel  
23 never, but it would take a lot, because -- I mean,  
24 it's -- it's their job. I'm not saying everybody that  
25 they're perfect, but it is their job to look at

1 everything. And without them, then who knows how the  
2 system would be.

3 The patents are a good thing, and very  
4 minor details are very easily looked over. So it would  
5 take a lot, but I'm not going to say never I wouldn't be  
6 able to ever find one invalid, but it would take a lot.

7 MS. AINSWORTH: Thank you very much.

8 A patent is what we would call a property  
9 right. It's not property like real estate, but it's  
10 intellectual property. Let me ask you one kind of  
11 further question along this: Does anyone feel like if a  
12 patent is a property right, regardless of what the  
13 evidence is or what the Judge says, I could never take  
14 that away from somebody? I could never take that away  
15 from a company or a person and find it invalid?

16 Does anyone -- other than Mr. Bryant or  
17 Mr. Powell who have kind of told us their views, does  
18 anybody else kind of feel that way?

19 JUROR COX: Can you repeat that, please?

20 MS. AINSWORTH: Yes, ma'am, Ms. Cox. If  
21 a patent is considered a property right, does anyone  
22 feel like, regardless of the evidence, I could never  
23 take someone's property away?

24 Yes, Mr. Bryant?

25 JUROR BRYANT: The way you're wording

1 that --

2 MS. AINSWORTH: I understand that you  
3 feel that way and thank you very much. Does anybody  
4 else feel like Mr. Bryant in that respect?

5 THE COURT: You have five minutes,  
6 Counsel.

7 MS. AINSWORTH: Thank you, Your Honor.  
8 Ms. Cox, you're kind of questioning  
9 there?

10 JUROR COX: I am. I sort of -- I agree  
11 with him, but, you know, people make mistakes. But I  
12 also know where I work they have intellectual property  
13 rights for things that I have developed and I develop  
14 things all the time. But if you were to leave them, I  
15 could change a minute detail, make it mine. Is that  
16 wrong? I don't know.

17 MS. AINSWORTH: Thank you very much. I  
18 appreciate it.

19 Let me ask some questions of some people  
20 that we haven't heard from yet and not let you get off  
21 without -- without asking you a couple of questions.

22 Mr. Davis, No. 6, I understand that you  
23 work in the legal profession. You work for -- is it  
24 Legal Services of Northern Louisiana?

25 JUROR DAVIS: Yes.

1 MS. AINSWORTH: What kind of work do you  
2 do for the company?

3 JUROR DAVIS: I'm the office assistant.  
4 I file all the stuff at the courthouse, and we just --  
5 we do civil cases. There's no criminal; just family  
6 law.

7 MS. AINSWORTH: Okay. And are you --  
8 does your -- does your office usually represent people  
9 who are bringing the cases or people who are being sued?

10 JUROR DAVIS: It's the people, either/or.

11 MS. AINSWORTH: Okay.

12 JUROR DAVIS: It's either/or.

13 MS. AINSWORTH: Thank you very much.

14 Ms. Love, if I could ask you a couple of  
15 questions. You're a certified medication --

16 JUROR LOVE: Yes.

17 MS. AINSWORTH: -- aide? How long have  
18 you been doing that work?

19 JUROR LOVE: Basically since about '97.

20 MS. AINSWORTH: And then you also work on  
21 tax preparation?

22 JUROR LOVE: Yes, but I'm not working in  
23 the medical field.

24 MS. AINSWORTH: Okay. So you don't do  
25 the medical work anymore. You're just doing the tax

1 preparing?

2 JUROR LOVE: I just do the tax preparing,  
3 but I still keep my certification up.

4 MS. AINSWORTH: Okay. Thank you very  
5 much.

6 And, Ms. Palmer, since you are a  
7 lawyer -- and is your law license still active? Are you  
8 still practicing in any respect?

9 JUROR PALMER: I do not practice. I took  
10 inactive status with the Louisiana State Bar in the  
11 early '90s.

12 MS. AINSWORTH: When you practiced, did  
13 you do any kind of patent work or intellectual property  
14 work?

15 JUROR PALMER: No, I did commercial -- I  
16 had pretty much an office practice. I did some  
17 commercial litigation. But generally speaking, I  
18 avoided intellectual property matters.

19 MS. AINSWORTH: Thank you. Does anybody  
20 on this jury panel know anybody else on the jury panel?  
21 Mr. Williams, who do you know?

22 JUROR WILLIAMS: I just realized I knew  
23 Randy Dilday.

24 MS. AINSWORTH: Okay. You're both in the  
25 Hallsville area.

1 JUROR WILLIAMS: Our fathers were very  
2 close when we were younger. They used to be friends.

3 MS. AINSWORTH: Thanks.

4 Anybody else on the panel know anybody  
5 else?

6 That's all.

7 Ladies and gentlemen, you spent a lot of  
8 time this morning. We appreciate your time. We  
9 appreciate your being straightforward and talking to us  
10 and sharing your thoughts and opinions, and we look  
11 forward to presenting this case to you.

12 Thank you.

13 THE COURT: All right. Counsel, approach  
14 the bench, please.

15 (Bench conference.)

16 THE COURT: Plaintiff have any members of  
17 the panel they wish to challenge for cause?

18 MR. CAPSHAW: None from the Plaintiff,  
19 Your Honor.

20 THE COURT: Defendants have any they wish  
21 to challenge?

22 MS. AINSWORTH: Yes, Your Honor. No. 8,  
23 Mr. Bryant.

24 THE COURT: What's the basis for that?

25 MS. AINSWORTH: The basis?

1           THE COURT: Other than he doesn't like  
2 you dropping your gun ads off Google?

3           MS. AINSWORTH: Right. That and his  
4 comments that he could never find patents invalid.

5           THE COURT: Okay.

6           MR. STOCKWELL: He's pretty firm in that,  
7 Your Honor.

8           THE COURT: Anybody else you'd like to  
9 challenge for cause?

10          MR. STOCKWELL: I did have questions  
11 about the conflicts that 10, 14, and 20 raised, but I  
12 assume the Court will address that.

13          THE COURT: Yes. I'll do that. So  
14 otherwise, no challenges for cause other than Mr. Bryant  
15 from the Defendant?

16          MS. AINSWORTH: No. That's all, Your  
17 Honor.

18          THE COURT: Okay. Y'all have a seat.  
19 (Bench conference concluded.)

20          THE COURT: All right. Ladies and  
21 gentlemen, I'm going to excuse the majority of the  
22 panel. I'm going to ask some of you to remain, and I  
23 have some questions to talk about you -- talk about with  
24 you at the bench.

25                 For those of you that I'm excusing, a

1 couple instructions. No. 1: Stay inside the building.  
2 Restrooms are out these double doors and to the left as  
3 are the water fountains, but please stay close by.

4 Second instruction: Don't discuss  
5 anything that happened during jury selection this  
6 morning. You have not heard any evidence yet, but  
7 nonetheless talk about any subject; the weather, the NFL  
8 playoffs, or anything you want to, but don't talk about  
9 what happened in here during the process this morning.

10 And for those of you who I'm asking to  
11 stay, if you'll just step out of the way and keep your  
12 same seats, and I'll call you up here one at a time.

13 So with that, I'm going to excuse  
14 everybody on the panel temporarily with those  
15 instructions, except Panel Members No. 8, 10, 14, 15,  
16 and 20. So everybody but those folks, you are excused  
17 at this time.

18 COURT SECURITY OFFICER: All rise.

19 (Jury panel out.)

20 THE COURT: All right. Be seated,  
21 please.

22 If you'll make sure that back door is  
23 closed, Mr. Floyd.

24 Counsel, if you'll approach the bench.

25 (Bench conference.)

1                   THE COURT: I'm going to take these in a  
2 different order. Mr. Williams, will you come up,  
3 please?

4                   This is -- step up, Mr. Williams. If  
5 you'll be sure to speak to that -- speak quietly.

6                   This is my question: You indicated you  
7 served on the Gregg County Grand Jury before?

8                   JUROR WILLIAMS: Correct.

9                   THE COURT: Do you live in Gregg County?

10                  JUROR WILLIAMS: I used to, two years  
11 ago.

12                  It's a Longview address, but it's  
13 Harrison County.

14                  THE COURT: I understand. I just wanted  
15 to make sure, because Gregg County is not in our  
16 division; Harrison County is. You're excused. Just  
17 don't discuss anything about the case.

18                  JUROR WILLIAMS: So I go outside?

19                  THE COURT: Yes, sir.

20                  Mr. Bryant, would you come up, please,  
21 sir?

22                  We're going to talk softly. You're  
23 perfect.

24                  Let me ask you this, Mr. Bryant: I heard  
25 your comments about Google, and you didn't like the fact

1 that they'd stop their -- allowing gun-related  
2 advertisements and things like that. I also heard you  
3 say you didn't think that would apply in a patent case.  
4 I need to know if you can be fair and impartial on this  
5 jury and treat Google just like SimpleAir, or whether,  
6 for whatever reason, you're going to treat Google a  
7 little differently, probably more negatively, than you  
8 would SimpleAir? That's basically my question to you.

9 JUROR BRYANT: I don't think I would. I  
10 think I would treat both parties the same.

11 THE COURT: Okay. Now, you've made a  
12 comment about being able to declare a patent invalid. I  
13 think you said that would be a difficult thing for you  
14 to do.

15 JUROR BRYANT: Yes, sir. I think the  
16 Patent Office may make mistakes occasionally, but not  
17 that often.

18 THE COURT: Okay. If the evidence showed  
19 you by clear and convincing evidence that the patent in  
20 this case was invalid, could you find it invalid?

21 JUROR BRYANT: Yes, sir, I sure could.

22 THE COURT: All right. Any questions,  
23 Mr. Stockwell, Ms. Ainsworth?

24 MS. AINSWORTH: If I could ask one  
25 question, Your Honor.

1                   Mr. Bryant, you mentioned that you  
2 thought Google's policy about -- can you hear, Your  
3 Honor -- you mentioned that you thought Google's policy  
4 about taking those ads down was un-American.

5                   Do you have strong feelings about whether  
6 Google's -- Google is an un-American company or a deeply  
7 held view of the type of company they are because of  
8 that?

9                   JUROR BRYANT: No, ma'am. I just think  
10 that that policy is un-American. Google is an American  
11 company. I know that, so it's not it's not the issue.

12                  MS. AINSWORTH: Okay. All right. Thank  
13 you, sir.

14                  JUROR BRYANT: You're welcome.

15                  THE COURT: Any questions from the  
16 Plaintiff?

17                  MR. CAPSHAW: No, Your Honor.

18                  THE COURT: All right. Mr. Bryant, I'm  
19 going to excuse you to join the rest of the group  
20 outside. Just don't discuss anything that's happened in  
21 here.

22                  JUROR BRYANT: Yes, sir.

23                  THE COURT: Thank you.

24                  I'm not going to excuse Mr. Bryant. He's  
25 indicated he can be fair and impartial. He may think

1 one of their policies is un-American, but I think that  
2 stems more from his strong feelings about the Second  
3 Amendment than Google itself. And he was clear that he  
4 could treat Google just like he could SimpleAir. So I'm  
5 going to overrule the challenge for cause to Mr. Bryant.

6 Ms. Cox, would you join us, please?

7 And we're going to talk softly, but if  
8 you'd just talk right into that little microphone with  
9 me.

10 JUROR COX: Okay.

11 THE COURT: You indicated you had a  
12 scheduling problem that might prevent you from being  
13 available all week.

14 JUROR COX: Well, for Friday. I've got a  
15 prepaid flight at 11:30 on Friday.

16 THE COURT: Where are you going?

17 JUROR COX: Austin for a family reunion.

18 THE COURT: Okay. When's the family  
19 reunion?

20 JUROR COX: Friday night, Saturday.

21 THE COURT: Okay. Well, it's possible we  
22 might be through by Friday, but probably not at 11:00,  
23 and certainly probably not early enough for you to get  
24 to the airport. Are you flying out of Longview?

25 JUROR COX: Gregg County.

1 THE COURT: Gregg County?

2 JUROR COX: Uh-huh.

3 THE COURT: Okay. All right.

4 JUROR COX: I would be happy to do it if  
5 I -- you know, if it could be done.

6 THE COURT: Well, that's -- that's what I  
7 asked. Okay. Why don't you join the group outside?  
8 Just don't discuss anything about this case. But I'm  
9 going to excuse you so you don't have to worry about  
10 being selected.

11 JUROR COX: Thank you. Okay.

12 THE COURT: Mr. Powell.

13 All right. I'm going to excuse Ms. Cox.

14 MS. AINSWORTH: Your Honor, if we might,  
15 just for the record, object to her being excused just  
16 because Austin is not that far away and she could  
17 probably join the family reunion that evening.

18 THE COURT: Your objection is noted.

19 MS. AINSWORTH: Thank you.

20 THE COURT: We've got plenty of people on  
21 the panel. There's no way she can get to Austin by 11  
22 o'clock unless you all give me back a lot of time during  
23 this trial. So all things considered, I don't see a  
24 reason to make her be late for a family reunion,  
25 especially since she's already got a prepaid ticket

1 that's been bought.

2 All right. Mr. Powell, you indicated you  
3 would have possibly a scheduling problem with serving  
4 during the whole week if you were selected on the jury?

5 JUROR POWELL: Yes.

6 THE COURT: Tell me about that.

7 JUROR POWELL: I have an eye appointment  
8 this Wednesday at 2:00 o'clock. I'm currently in the  
9 process of getting fitted for contacts. I'm going  
10 skiing at the end of January, and I've been noticing my  
11 vision has been a little off, so I'm trying to get my  
12 vision back right so I can steer right down the slope.

13 THE COURT: Where -- where do you have  
14 this appointment?

15 JUROR POWELL: It's at Kilgore Eyecare or  
16 Kilgore Eye Center, I believe.

17 THE COURT: Okay.

18 JUROR POWELL: But it's in Kilgore,  
19 Texas. It's at 2:00 o'clock this Wednesday.

20 THE COURT: All right. If we needed you  
21 to serve, could you reschedule that and still get your  
22 eyes fixed before you go skiing at the end of the month?

23 JUROR POWELL: Well, this is my first  
24 re-fitting and I have -- don't know how long -- they try  
25 and leave a week in between, like I went originally last

1 Wednesday.

2 THE COURT: Uh-huh.

3 JUROR POWELL: And I got to go back this  
4 Wednesday and possibly go back the next Wednesday. They  
5 try and leave about a week in between, and I don't know  
6 -- they said normally it takes two to three trips. I'm  
7 leaving Friday, the 31st, to go to Colorado.

8 THE COURT: Okay. All right. Anything  
9 else I need to know about your schedule for this week  
10 other than the eye appointment?

11 JUROR POWELL: I believe that's it.

12 THE COURT: Okay. I'm going to excuse  
13 you to join the rest of the group outside. Just don't  
14 discuss anything about what we talked about in here.

15 JUROR POWELL: Okay.

16 THE COURT: Thank you.

17 I'm not going to excuse Mr. Powell. He  
18 can certainly reschedule at the eye clinic without any  
19 difficulty, and he didn't give the Court any concrete  
20 reason as to why he could only go this week, so those  
21 things considered, I'm not going to excuse him.

22 Ms. Crow, would you come up, please? Ms.  
23 Crow, you indicated you might have a scheduling problem  
24 serving this week. Tell me about that.

25 JUROR CROW: Yes, for one, I mentioned

1 that I do baby-sit for my sister and my brother-in-law  
2 for their 18-month-old. Well, my sister is starting  
3 college this week, and we don't have a day care center  
4 anywhere in Atlanta. And, two, I'm sick. I've got a  
5 rash --

6 THE COURT: I see that.

7 JUROR CROW: -- under my arm, and it's  
8 not just my arm. It's my stomach and my legs and hips,  
9 as well. And I was going to go to the doctor for it  
10 this morning, but I had to come here.

11 THE COURT: Okay.

12 JUROR CROW: And I was going to call, but  
13 I didn't have a phone number.

14 And, three, I don't have a car. I had to  
15 borrow my son's. Luckily he was off today.

16 THE COURT: But he's not going to be off  
17 every day of this week?

18 JUROR CROW: No.

19 THE COURT: Okay. I'm going to excuse  
20 you, Ms. Crow.

21 JUROR CROW: Plus his car, the starter is  
22 going out so I have to constantly click it -- click it  
23 to get it to start.

24 THE COURT: Well, you've got more  
25 problems than anybody I have to deal with. I'm going to

1 excuse you. Go ahead and join the rest of the group  
2 outside. Don't discuss anything about what we said in  
3 here, but you're not going to be on the panel for jury  
4 selection.

5 JUROR CROW: Okay. Thank you.

6 THE COURT: Thank you. Uh-huh.

7 All right. Counsel, how long do you need  
8 to exercise your peremptory challenges?

9 MR. CAPSHAW: Can we have 20?

10 THE COURT: Let's make it 11:30. I'll  
11 give you 17. All right.

12 MS. AINSWORTH: Thank you.

13 MR. CAPSHAW: Thank you.

14 (Bench conference concluded.)

15 THE COURT: All right. The Court will  
16 stand in recess while counsel exercises their peremptory  
17 challenges. We'll reconvene at 11:30. The Court stands  
18 in recess.

19 COURT SECURITY OFFICER: All rise.

20 (Recess.)

21 (Jury panel in.)

22 COURT SECURITY OFFICER: All rise.

23 THE COURT: Be seated, please.

24 All right. Ladies and gentlemen, if you  
25 will listen carefully as your name is called, if you'll

1 come forward and take your seat in the jury box. We're  
2 going to seat eight jurors in this case, so I'd like to  
3 put the first four on the front row and the second four  
4 on the back row. And given that there are extra seats  
5 in the box and to -- to position the jury so that it  
6 will be in the center of the box, I'd like to leave the  
7 last two seats on each row. And that means the seats  
8 toward the doors coming into the courtroom. I'd like to  
9 leave those two seats empty.

10               So Juror No. 1 will actually come to the  
11 front row of the box and sit in the third seat down, and  
12 I think that should be clear. And then the second row  
13 will do likewise.

14               So with that, Ms. Lockhart, our courtroom  
15 deputy, will call the names of the persons selected to  
16 serve on our jury at this time.

17               COURTROOM DEPUTY: Joyce Foster, Randy  
18 Dilday, Philip Norris, Richard Davis, Mary Love, Connett  
19 Allen, Jonathan Williams, and Samuel Pemberton.

20               THE COURT: All right. Would you be  
21 seated, please.

22               Those of you that were not selected to  
23 serve in this case, I'm about to excuse you at this  
24 time. I excuse you with the sincere thanks of the  
25 Court. As I said earlier, you're performing a

1 significant public service by being here. And I  
2 recognize, as does everyone on the Court staff, that  
3 each of you not selected had other places you could have  
4 been this morning, other important things you could have  
5 been doing, but it's vital to our system of justice that  
6 you come and be willing to serve and be a part of the  
7 panel, even though you weren't selected. And you have  
8 our sincere thanks for doing that.

9           The only thing I would ask is when your  
10 name is called again and you get to come back for jury  
11 service in the future, just have the same positive  
12 attitude we've seen today, and we'll appreciate it very  
13 much.

14           If you need anything for your employment,  
15 please see Ms. Martin and the ladies in the Clerk's  
16 Office. They'll be glad to furnish you anything  
17 regarding that. And with that, ladies and gentlemen,  
18 those of you not selected to serve on this jury are  
19 excused at this time.

20           (Jury panel out.)

21           THE COURT: Members of the jury, if you  
22 will stand at this time, Ms. Lockhart will administer  
23 the oath to you.

24           (Jurors sworn.)

25           THE COURT: Be seated, ladies and

1 gentlemen.

2 I'm about to excuse you for lunch, but  
3 before I do, I need to give you a few additional  
4 instructions. This case is going to be decided solely  
5 on the evidence that you hear in the courtroom and the  
6 exhibits that are permitted to be received into evidence  
7 during the trial. Those are the only two sources of the  
8 evidence that you'll base your verdict on.

9 Up until this point, ladies and  
10 gentlemen, you've heard absolutely no evidence in this  
11 case. What the lawyers tell you in this case is not  
12 evidence. That is simply their contentions of what they  
13 think the evidence will show, but it is not evidence.

14 Therefore, it's essential that the case  
15 be decided solely upon the evidence that is presented  
16 during the trial so that you as the judges of the facts  
17 can make your decisions based solely on that evidence.

18 Accordingly, it is absolutely essential  
19 that there be no outside influences, no outside  
20 information, nothing other than the sworn testimony and  
21 the exhibits admitted into evidence that you should base  
22 your verdict and your decision about the facts in this  
23 case on.

24 So as I excuse you for lunch today, I'm  
25 excusing you with the specific instruction that you not

1 discuss the case among yourselves or with anyone else.

2           And I can promise you that you'll hear  
3 that instruction from me just about every time you get  
4 up and step out of that jury box until the case is over.  
5 And the reason I'm so repetitive with it is that it is  
6 so vital and critical that there be no outside  
7 influences, no outside information, that your decisions  
8 in this case as the jury are based solely upon the sworn  
9 testimony of the witnesses and the exhibits that come in  
10 during the trial. So don't discuss the case with  
11 anyone.

12           And until the evidence is all in and I  
13 excuse you to retire to the delib -- to the jury room to  
14 deliberate on your verdict, don't discuss the case among  
15 yourselves. Only after all the evidence is in and I've  
16 excused you to deliberate on the verdict, then and only  
17 then can you discuss the case among yourselves. Until  
18 then, not among yourselves and not with anyone else  
19 anywhere else to any degree whatsoever.

20           Along those same lines about avoiding any  
21 possible outside influences, whether it's over lunch  
22 today and you're using your smartphone, whether it's at  
23 home tonight and you're using your computer, don't go  
24 online and do any research about this case. Don't seek  
25 to gain any information from any source other than the

1 sworn testimony of the witnesses and the exhibits that  
2 are admitted during the trial.

3           Also, as far as not communicating about  
4 the case in any way, that not only means verbal  
5 communications, like a conversation, that means any  
6 other type of communications. So if you're users of  
7 social media, whether it's Facebook or MySpace or  
8 Twitter or any of the other many, many types of social  
9 media out there, don't post anything, don't -- don't  
10 publish anything digitally, electronically about this  
11 case whatsoever. That's just as much an unpermitted  
12 communication as having a conversation with somebody  
13 about the case would be.

14           And as I said earlier, don't seek to do  
15 any research, whether it's online or at the local  
16 library or the newspaper or anywhere else. Don't seek  
17 to do any research. Again, the point is your  
18 information that you base your verdict on in this case  
19 must be limited solely to the sworn testimony from the  
20 witnesses during the trial and the exhibits that are  
21 admitted into evidence. Those are the only two sources  
22 from which you should make a decision.

23           I don't think it will happen in this  
24 case, it -- it is possible, but it is very rare. But  
25 now that you have been selected as jurors in this case,

1 it is possible that some third party at some point might  
2 try to approach you and influence you to rule a certain  
3 way or to make a certain decision in this case. Again,  
4 I think that's very unlikely, but I want you to know  
5 it's possible. Therefore, if at any time you feel that  
6 you've received or someone's attempted to communicate  
7 with you in an in -- in an inappropriate way, for  
8 possibly the purpose of influencing you or getting you  
9 to rule a certain way, then you should let the Clerk's  
10 Office know immediately. They'll notify me, and the  
11 Court will deal with it. Again, I don't think that's  
12 likely, but it is possible. So I want to at least put  
13 you on notice about that.

14 I'm going to excuse you for lunch until  
15 1:00 o'clock. I'd like you back in the jury room  
16 assembled and ready to go about five minutes until 1:00,  
17 and we'll do our best to start the evidence at 1:00  
18 o'clock -- or start the trial at 1:00 o'clock this  
19 afternoon.

20 A couple other housekeeping matters. If  
21 you brought your cell phones with you, leave them in  
22 your cars. Don't bring your cell phones into the  
23 courtroom. There will be breaks and recesses during the  
24 day where if you need to check e-mail or something like  
25 that, you'll have an opportunity to go to your vehicle

1 and do that, but don't bring any electronic devices into  
2 the courtroom.

3           Also, if you haven't already done so, at  
4 some convenient time, at least before you leave today to  
5 go home, make sure that Ms. Martin in the Clerk's Office  
6 has an accurate cell phone number that can be used to  
7 reach you at any time. If for any reason the Court  
8 needed to get a message to you, I'd need a cell phone  
9 number where we could do that.

10           Again, don't discuss the case among  
11 yourselves or with anyone else. Have a good lunch. And  
12 we'll see you back here ready to go at 1:00 o'clock.

13           You're excused for lunch at this time.

14           COURT SECURITY OFFICER: All rise.

15           (Jury out.)

16           THE COURT: All right. Be seated,  
17 please.

18           Is there anything from the Plaintiff  
19 before we recess for lunch?

20           MR. CAPSHAW: Nothing from the Plaintiff,  
21 Your Honor.

22           THE COURT: Anything from the Defendant?

23           MR. STOCKWELL: Your Honor, I would  
24 like to know if we can use this opening slide.

25           THE COURT: I will get you an answer

1 before 1:00 o'clock. I've got a copy of it and my clerk  
2 has a copy of it.

3 MR. STOCKWELL: Thank you, Your Honor.

4 THE COURT: All right. Anything else,  
5 Mr. Stockwell?

6 MR. STOCKWELL: That's it, Your Honor.

7 THE COURT: All right. Counsel, you're  
8 excused for lunch. We'll start back at 1:00 o'clock.

9 COURT SECURITY OFFICER: All rise.

10 THE COURT: Court stands in recess until  
11 then.

12 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/\_\_\_\_\_  
SHELLY HOLMES, CSR  
Official Court Reporter  
State of Texas No.: 7804  
Expiration Date 12/31/14

\_\_\_\_\_1-13-14\_\_\_\_\_  
Date

/s/\_\_\_\_\_  
SUSAN SIMMONS, CSR  
Official Court Reporter  
State of Texas No.: 267  
Expiration Date 12/31/14

\_\_\_\_\_1-13-14\_\_\_\_\_  
Date